

# 1976

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## Volume 2

*Titles*

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# TITLE 18

## BUSINESSES AND PROFESSIONS

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**Reviser's note:** Throughout Title 18 RCW reference is made to the "director of licenses" and the "department of licenses" The powers, duties and functions of the director and department of licenses were transferred to the director and department of motor vehicles by chapter 156, Laws of 1965 (Chapter 46.01 RCW). Section 41, chapter 170, Laws of 1965 ex.s. (RCW 43.24.022) vested the powers, duties and functions of the director of licenses pursuant to Title 18 RCW in the director of motor vehicles and section 42 of that act (RCW 43.24.024) provided for the delegation of such powers, duties and functions to the division of professional licensing of the department of motor vehicles.

These powers, duties and functions devolved to the business and professional licensing administration of the department of motor vehicles by 1969 ex.s. c 281 § 34 (RCW 46.01.050).

*Alcoholics, establishments for care of: Chapter 71.12 RCW.*

*Ambulances and ambulance drivers: RCW 70.54.060.*

*Antifreeze vending: Chapter 19.04 RCW.*

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*Cemeteries, morgues and human remains: Title 68 RCW.*

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*Cities and towns, powers to regulate business: Title 35 RCW.*

*Coal mining: Title 78 RCW.*

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*Common carriers: Title 81 RCW.*

*Confectioners: Chapter 69.20 RCW.*

*Copyright protection: Chapter 19.24 RCW.*

*Credit unions: Chapter 31.12 RCW.*

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*Dangerous caustic and corrosive substances: Chapter 69.36 RCW.*

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*Domestic waste treatment plants—Certification and regulation of operators: Chapter 70.95B RCW.*

*Drugs and cosmetics: Chapter 69.04 RCW.*

*Eggs and egg products: Chapter 69.25 RCW.*

*Electrical advisory board: RCW 19.28.065.*

*Electricians: Chapter 19.28 RCW.*

*Explosives, manufacture, sale or storage: Chapter 70.74 RCW.*

*Farm labor contractors: Chapter 19.30 RCW.*

*Fireworks, sale of: Chapter 70.77 RCW.*

*Fish dealers and processors*: RCW 75.28.300, 75.28.310.  
*Fishermen, commercial*: Title 75 RCW.  
*Flour, standards and manufacture*: RCW 69.08.030.  
*Food lockers*: Chapter 19.32 RCW.  
*Food processing, adulteration, misbranding, standards*: Chapter 69.04 RCW.  
*Forests and forest products*: Title 76 RCW.  
*Fruit*: Title 15 RCW.  
*Fur dealers*: RCW 77.32.210.  
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*Grist mills*: Chapter 19.44 RCW.  
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*Honey, standards and marketing*: Chapter 69.28 RCW.  
*Horse racing*: Chapter 67.16 RCW.  
*Hotels*: Chapter 19.48 RCW.  
*Hulk haulers' or scrap processors' licenses*: Chapter 46.79 RCW.  
*Industrial loan companies*: Chapter 31.04 RCW.  
*Licensing of agencies caring for expectant mothers*: Chapter 74.15 RCW.  
*Macaroni and macaroni products*: Chapter 69.16 RCW.  
*Mentally ill, establishments for care of*: Chapter 71.12 RCW.  
*Mines, mineral and petroleum*: Title 78 RCW.  
*Monopolies and trusts prohibited*: State Constitution Art. 12 § 22.  
*Motor vehicle transporters*: Chapter 46.76 RCW.  
*Mutual savings banks*: Title 32 RCW.  
*Partnerships*: Title 25 RCW.  
*Pawnbrokers*: Chapter 19.60 RCW.  
*Pilotage on Puget Sound*: Chapter 88.16 RCW.  
*Poisons and dangerous drugs, dispensing and sale*: Chapter 69.40 RCW.  
*Public utilities*: Title 80 RCW.  
*Railroads and other common carriers*: Title 81 RCW.  
*Registered nurse may obtain drugs from hospital pharmacy*: RCW 18.64.250.  
*Retail installment sales of goods and services*: Chapter 63.14 RCW.  
*Sale or use of shoddy*: Chapter 70.70 RCW.  
*Sales of personal property*: Article 62A.2 RCW.  
*Savings and loan associations*: Title 33 RCW.  
*Scrap processors' or hulk haulers' licenses*: Chapter 46.79 RCW.  
*Small loan companies*: Chapter 31.08 RCW.  
*Steam boilers and pressure vessels, construction, installation, inspection and certification*: Chapter 70.79 RCW.  
*Steamboat companies*: Chapter 81.84 RCW.  
*Student loan contracts*: Chapter 26.30 RCW.  
*Suretyship*: Chapter 19.72 RCW.  
*Taxicabs*: Chapter 46.72 RCW.  
*Taxidermists*: Chapter 77.32 RCW.  
*The Washington Principal and Income Act*: Chapter 11.104 RCW.  
*Toll logging roads*: Chapter 76.24 RCW.  
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### Chapter 18.04 ACCOUNTANCY

#### Sections

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**18.04.020 Board of accountancy.** There is hereby created a board to be known as the board of accountancy of the state of Washington, hereinafter called the "board." The board shall consist of five members to be appointed by the governor, and all the members of the first board shall be appointed within thirty days after the \*effective date of this chapter. [1949 c 226 § 1; Rem. Supp. 1949 § 8269–8. Prior: 1903 c 72 § 1.]

\*Reviser's note: "effective date of this chapter" [1949 c 226] is midnight, June 8, 1949, see preface, 1949 session laws.

**18.04.030 Qualifications of C.P.A. members—Terms.** Three of the members of the board shall be citizens of the United States and residents of the state of Washington who hold certificates as certified public accountants issued under the laws of this state and who are and have been continuously during the preceding ten years in active practice in this state as certified public accountants. The persons first to be appointed as such members of the board shall hold office, one for one year, one for two years, and one for three years, from the effective date of this chapter, the term of each to be designated by the governor. Thereafter, appointments of each of these three members shall be for terms of three years, but no person shall be eligible for reappointment who has served two consecutive three-year terms. [1949 c 226 § 2; Rem. Supp. 1949 § 8269–9. Prior: 1903 c 72 § 1.]

**18.04.040 Qualifications of L.P.A. member—Term.** The fourth member of the board shall be a citizen of the United States residing in the state of Washington who holds a license as a licensed public accountant



issued under the laws of this state but who does not hold a certificate as a certified public accountant and who is and has been continuously during the preceding five years in active practice in this state as a licensed public accountant: *Provided, however,* That after the licensed public accountants registered under this chapter as hereinafter provided shall have decreased in number to ten, no person shall be eligible for appointment as such fourth member unless he possesses the qualifications hereinabove prescribed for the first three members. The person first to be appointed as such fourth member of the board shall hold office for two years from the effective date of this chapter. Thereafter, appointments as such fourth member shall be for a term of two years, but no person shall be eligible for reappointment who has served two consecutive terms. [1949 c 226 § 3; Rem. Supp. 1949 § 8269-10. Prior: 1903 c 72 § 1.]

**18.04.050 Qualifications of P.A. member—Term.** The fifth member of the board shall be a citizen of the United States residing in the state of Washington who does not hold a certificate as a certified public accountant or a license as a licensed public accountant and who is and has been continuously during the preceding five years in active practice in this state as a public accountant. The person first to be appointed as such fifth member of the board shall hold office for a term of three years from the effective date of this chapter. Thereafter, appointments as such fifth member shall be for a term of two years, but no person shall be eligible for reappointment who has served two consecutive terms. After such initial three year term the fifth member of the board shall likewise be a citizen of the United States residing in the state of Washington who holds a license as licensed public accountant issued under the laws of this state, but who does not hold a certificate as a certified public accountant, and who is and has been continuously during the preceding five years in active practice in this state as a licensed public accountant: *Provided, however,* That after the licensed public accountants registered under the chapter shall have decreased in number to five, no person shall be eligible for appointment as such fifth member unless he possesses the qualifications hereinabove prescribed for the first three members. [1949 c 226 § 4; Rem. Supp. 1949 § 8269-11. Prior: 1903 c 72 § 1.]

**Effective date—1949 c 226:** See note following RCW 18.04.020.

**18.04.060 Vacancies—Removal.** Each member shall continue to serve until a successor shall have been appointed and shall have qualified. Vacancies in the membership of the board occurring during a term shall be filled by appointment by the governor for the unexpired term. The governor may remove any member of the board for misconduct, incompetency or neglect of duty. [1949 c 226 § 5; Rem. Supp. 1949 § 8269-12. Prior: 1903 c 72 § 1.]

**18.04.070 Organizational powers—Rules and regulations—Quorum—Records—Personnel.** The board shall elect annually a chairman, vice chairman and a secretary. The board may adopt, and amend from

time to time, rules and regulations for the orderly conduct of its affairs and for the administration of this chapter. The board may promulgate and amend rules of professional conduct appropriate to establish and maintain a high standard of integrity and dignity in the profession of public accountancy. A majority of the board shall constitute a quorum for the transaction of business. The board shall keep records of its proceedings which shall be open for public inspection. The board may hire such employees as are necessary to assist it in the performance of its duties and the keeping of its records. [1961 c 294 § 1; 1949 c 226 § 6; Rem. Supp. 1949 § 8269-13. Prior: 1903 c 72 § 2.]

**18.04.080 Travel expenses of members.** Each member of the board shall be paid twenty-five dollars for each day or portion thereof spent in the discharge of his official duties and shall be reimbursed for travel expenses incurred in the discharge of such duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 25; 1949 c 226 § 7; Rem. Supp. 1949 § 8269-14.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.04.090 Board to receive applications—Investigation.** The board shall receive applications for certificates of certified public accountants and for licenses of licensed public accountants, shall investigate the qualifications of the applicants and shall instruct the director of licenses to issue the appropriate certificates or licenses to those properly qualified as provided in this chapter. [1949 c 226 § 8; Rem. Supp. 1949 § 8269-15. Prior: 1903 c 72 § 2.]

**18.04.100 Annual register.** The board shall have printed and published for public distribution, in January of each year, an annual register which shall contain the names, arranged alphabetically by classification, of all persons holding permits to practice the profession of public accounting in this state. [1949 c 226 § 9; Rem. Supp. 1949 § 8269-16.]

**18.04.110 Annual report.** The board shall file an annual report of its activities with the governor. [1949 c 226 § 10; Rem. Supp. 1949 § 8269-17.]

**18.04.120 Qualifications of C.P.A. licensees—Examinations.** The certificate of "certified public accountant" shall be issued by the director of motor vehicles upon the authority of the board, to any person (1) who is a resident of this state or who has a place of business or is employed in this state, and (2) who has attained the age of eighteen years, and (3) who is of good moral character, and (4) who shall have successfully passed a written examination the contents of which shall be determined by the board, said examination, however, to contain at least the following subjects, theory of accounts, accounting practice, auditing, commercial law as affecting public accounting and insofar as practical, the examination and grading service of the American Institute of Certified Public Accountants shall

be used, but the board shall have the authority to examine beyond that which is contained in the examination of the American Institute of Certified Public Accountants, and (5) who meets such requirements of education as determined by the board, within the intent of subsection (4).

(6) The board may require in addition to education and successful examination that an applicant to be certified shall submit an affidavit of a licensed public accountant or certified public accountant that such applicant has been employed in the position of public accountant for a period of not more than two years in the office of such licensed public accountant or certified public accountant.

Any person holding a registration as a licensed public accountant on June 12, 1969 shall have the right to take succeeding examinations for certified public accountant when he has met the requirements which were in effect immediately prior to the passage of chapter 114, Laws of 1969.

The board shall have the authority to accept experience in private or governmental accounting or auditing work of a character and for a length of time sufficient in the opinion of the board to be substantially equivalent to the requirements of subsection (6) of this section: *Provided*, That the length of time which may be established by the board shall not exceed four years. [1971 ex.s. c 292 § 17; 1969 c 114 § 1; 1949 c 226 § 11; Rem. Supp. 1949 § 8269-18. Prior: 1937 c 41 § 1; 1933 ex.s. c 56 § 2; 1903 c 72 § 3; RRS § 8268-1.]

**Severability**—1971 ex.s. c 292: See note following RCW 26.28.010.

**18.04.130 Examining committee**—Time and place for examinations. The members of the board who hold certificates as certified public accountants shall constitute the examining committee. This committee shall hold written examinations of applicants for certificates as certified public accountants at least semiannually at such time and place as applications and circumstances may warrant. [1949 c 226 § 12; Rem. Supp. 1949 § 8269-19. Prior: 1903 c 72 § 2; RRS § 8266.]

**18.04.160 Successive examinations**—Application fees. A candidate who fails an examination shall have the right to take succeeding examinations subject to such rules and regulations as the board may adopt governing reexaminations. The board may for good cause shown, waive the requirement that a candidate must have taken an examination at least once a year. An application for examination or reexamination in any subject shall be accompanied by a fee in an amount determined by the board in accordance with this chapter not to exceed seventy-five dollars. [1975 1st ex.s. c 229 § 1; 1969 c 114 § 2; 1949 c 226 § 15; Rem. Supp. 1949 § 8269-22.]

**18.04.170 Requirements as to prior applicants.** Any candidate who, prior to the passage of this chapter, has applied to take an examination, or held a valid license as a licensed public accountant or was regularly enrolled in any college or correspondence course in accounting, or any person whose registration under this chapter is

accepted by the board, will be issued a certificate as a certified public accountant when he has met either the requirements of this chapter, or the requirements which were in effect immediately prior to the passage of this chapter, or the requirements which were effective at the time his first application was filed at the candidate's choice. [1949 c 226 § 16; Rem. Supp. 1949 § 8269-23.]

**Effective date**—1949 c 226: See note following RCW 18.04.020.

**18.04.180 Reciprocity.** The board shall authorize the issuance of a certificate as certified public accountant to any person who is the holder of a certificate, license, permit or degree authorizing him to practice as a certified public accountant in any state, territory, or possession of the United States, providing the requirements which such person has been called upon to meet in order to obtain such certificate, license, permit or degree were at least the equivalent of those for obtaining a certificate to practice as a certified public accountant in this state: *And provided, further*, That such state, territory or possession makes similar provision to authorize a person who holds a valid certificate to practice in this state as a certified public accountant to practice in such state, territory or possession as a certified public accountant. [1949 c 226 § 17; Rem. Supp. 1949 § 8269-24.]

**18.04.190 Application of chapter to prior licensees.** Any person who at the effective date of this chapter holds a valid certificate to practice public accounting in this state as a certified public accountant shall not be required to meet the requirements set forth herein and shall be considered to be the holder of a valid certificate to practice as a certified public accountant in this state under this chapter, and shall be subject to all the provisions of this chapter. [1949 c 226 § 18; Rem. Supp. 1949 § 8269-25.]

**Effective date**—1949 c 226: See note following RCW 18.04.020.

**18.04.200 Requirements as to C.P.A. partnerships.** The director of motor vehicles shall register a partnership as a partnership of certified public accountants if the partnership meets the following requirements:

(1) At least one partner must hold a valid certificate to practice in this state as a certified public accountant;

(2) Each partner personally engaged within this state in the practice of public accounting must hold a valid certificate to practice in this state as a certified public accountant; and

(3) Each partner must hold a valid certificate, license, permit or degree authorizing him to practice as a certified public accountant in a state, territory, or possession of the United States;

(4) Each resident manager in charge of an office of the partnership in this state must hold a valid certificate to practice in this state as a certified public accountant; and

(5) The application for registration as a partnership of certified public accountants must be approved by the board.

Application for such registration shall be in writing, sworn to by a partner of such partnership who holds a

valid certificate to practice in this state as a certified public accountant. A notice of amendment shall be filed with the board within one month after the admission to, or withdrawal of a partner from, any partnership so registered. A fee in an amount determined by the board in accordance with this chapter not to exceed thirty dollars must accompany each original application and each notice of amendment. [1975 1st ex.s. c 229 § 2; 1969 c 114 § 3; 1949 c 226 § 19; Rem. Supp. 1949 § 8269-26. Prior: 1937 c 41 § 3; RRS § 8268-3.]

**18.04.210 Advancement of public accountant to L.P.A.** Any person who has been registered as a public accountant under the provisions of this chapter, and who has been continuously engaged in the practice of public accounting as his principal occupation since such registration may, within three years after the effective date of this chapter, make application for a license to practice as a licensed public accountant, accompanied by a fee of twenty-five dollars. If the board determines that such person then meets all of the requirements for becoming a licensed public accountant under the law in effect prior to the effective date of this chapter, the director of licenses shall issue a license to such person to practice as a licensed public accountant. No person other than one qualifying under this paragraph shall be issued a license to practice as a licensed public accountant after the effective date of this chapter.

Any person who, at the effective date of this chapter, holds a valid license to practice public accounting in this state as a licensed public accountant shall not be required to again qualify as provided for herein and shall be considered to be the holder of a license to practice as a licensed public accountant under this chapter, and the holder thereof shall be subject to all the provisions of this chapter. [1949 c 226 § 20; Rem. Supp. 1949 § 8269-27.]

**Reviser's note:** In the last sentence of the first paragraph the words ", except as is provided in section 35 of this act" have been deleted. The reference to "section 35 of this act" was added by committee amendment simultaneously with an amendment which struck section 8 of the bill and ordered subsequent sections to be renumbered accordingly (see 1949 Senate Journal, pp 520, 521). Pursuant thereto section 35 was renumbered as section 34 (RCW 18.04.340). The reference to section 35 appears moot, since it related only to the last paragraph of section 35 of the bill (1949 c 226 § 34) and the last paragraph was vetoed. The vetoed paragraph is not codified. RCW 18.04.340 has been subsequently amended.

**Effective date**—1949 c 226: See note following RCW 18.04.020.

**18.04.220 Requirements as to L.P.A. partnerships.** The director of motor vehicles shall register a partnership as a partnership of licensed public accountants if the partnership meets the following requirements:

(1) At least one general partner must hold a valid certificate to practice in this state as a certified public accountant or a valid license to practice in this state as a licensed public accountant;

(2) Each partner personally engaged within this state in the practice of public accounting must hold a valid certificate to practice in this state as a certified public accountant or a valid license to practice in this state as a licensed public accountant;

(3) Each partner must hold a valid certificate, license, permit or degree authorizing him to practice as either a certified public accountant or a licensed public accountant in a state, territory, or possession of the United States;

(4) Each resident manager in charge of an office of the partnership in this state must hold a valid certificate to practice in this state as a certified public accountant or a valid license to practice in this state as a licensed public accountant; and

(5) The application for registration as a partnership of licensed public accountants must be approved by the board.

Application for such registration shall be in writing, sworn to by a partner of such partnership who holds a valid certificate to practice in this state as a certified public accountant or a valid license to practice in this state as a licensed public accountant. A notice of amendment shall be filed with the board within one month after the admission to, or withdrawal of a partner from, any partnership so registered. A fee in an amount determined by the board in accordance with this chapter not to exceed thirty dollars must accompany each original application and each notice of amendment. [1975 1st ex.s. c 229 § 3; 1969 c 114 § 4; 1949 c 226 § 21; Rem. Supp. 1949 § 8269-28.]

**18.04.230 Public accountants' registration committee.** The board shall appoint three persons who shall constitute the public accountants' registration committee. One of these members shall be a public accountant in practice in this state who does not hold a license to practice as a licensed public accountant or a certificate to practice as a certified public accountant, one member shall be a person holding a valid license to practice as a licensed public accountant and one member shall be a person holding a valid certificate to practice as a certified public accountant. Each of the members must be and have been continuously during the five years preceding his appointment, in active practice as a public accountant in this state.

The committee may adopt, and amend from time to time, rules and regulations for the orderly conduct of its affairs and for the administration of this chapter. Each member of the committee shall be paid twenty-five dollars for each day or portion thereof spent in the discharge of his official duties and shall be reimbursed for travel expenses incurred in the discharge of such duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 26; 1949 c 226 § 22; Rem. Supp. 1949 § 8269-29.]

**Effective date**—**Severability**—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

**18.04.240 Qualifications of P.A. registrants.** Any person (1) who is a resident of this state, or who has a place of business or is employed in this state, and (2) who is of good moral character and (3) who meets the requirements of subdivision (a) or (b) or (c) of this section may apply for registration as a public accountant:

(a) Persons who held themselves out to the public as public accountants, and who were engaged within this state at the effective date of this chapter in the practice of public accounting as their principal occupation;

(b) Staff accountants employed by certified public accountants or by licensed public accountants or by public accountants and regularly assigned to accounting engagements at the effective date of this chapter; and

(c) Persons serving in the armed forces of the United States or any of the United Nations, who immediately prior to entering such service were residents of this state and held themselves out to the public as public accountants and who were engaged in the practice of public accounting as their principal occupation, or who were employed as staff accountants by certified public accountants or by licensed public accountants or by public accountants and regularly assigned to accounting engagements. In the case of any such person serving in the armed forces of the United States or any of the United Nations on the effective date of this chapter, the time for registration provided for herein shall be extended for a period of twelve months from the time such person is honorably discharged from such service.

The application for registration must be filed on or before sixty days after the effective date of this chapter, accompanied by a fee of twenty-five dollars. [1949 c 226 § 23; Rem. Supp. 1949 § 8269-30.]

**Effective date**—1949 c 226: See note following RCW 18.04.020.

**18.04.250 Determination of eligibility for registration as public accountant.** The public accountants' registration committee shall in each case determine whether the applicant is eligible for registration, promptly notifying the applicant of its determination by registered mail. An application which is approved by the public accountants' registration committee shall be reviewed by the board, and if it be approved by the board, the director of licenses shall register the applicant as a public accountant.

Such registration shall cease to be effective if the registrant fails to either apply for, or meet the requirements for, a license to practice as a licensed public accountant as provided in RCW 18.04.210. [1949 c 226 § 24; Rem. Supp. 1949 § 8269-31.]

**18.04.260 Appeal.** Any person whose application has not been approved by the public accountants' registration committee may appeal to the board for a review within sixty days after notification of disapproval is mailed to him. The board will arrange a hearing as provided in RCW 18.04.320, at which the applicant may produce arguments and additional evidence to substantiate his application. The decision of the board shall be final, except for review as provided in RCW 18.04.320. [1949 c 226 § 25; Rem. Supp. 1949 § 8269-32.]

**18.04.270 Requirements as to P.A. partnerships.** The director of licenses shall register a partnership as a partnership of public accountants if the partnership meets the following requirements:

(1) At least one general partner must hold a valid certificate to practice in this state as a certified public

accountant, a valid license to practice in this state as a licensed public accountant, or be a registered public accountant of this state;

(2) Each partner personally engaged within this state in the practice of public accounting must hold a valid certificate to practice in this state as a certified public accountant or a valid license to practice in this state as a licensed public accountant, or be a registered public accountant of this state;

(3) Each partner must be duly authorized by a certificate, license, permit, degree or registration to practice as either a certified public accountant, a licensed public accountant, or a public accountant in a state, territory or possession of the United States;

(4) Each resident manager in charge of an office of the partnership in this state must hold a valid certificate to practice in the state as a certified public accountant or a valid license to practice in this state as a licensed public accountant or be a registered accountant of this state; and

(5) The application for registration as a partnership of public accountants must be approved by the board. [1949 c 226 § 26; Rem. Supp. 1949 § 8269-33. Prior: 1937 c 41 § 3; RRS § 8268-3.]

**18.04.280 Application for partnership registration.** Application for registration shall be in writing sworn to by a partner of the applicant partnership who holds a certificate to practice in this state as a certified public accountant or a license to practice in this state as a licensed public accountant or is a registered public accountant of this state. A notice of amendment shall be filed with the board within one month after the admission to, or withdrawal of a partner from, any partnership so registered. A fee in an amount determined by the board in accordance with this chapter not to exceed thirty dollars shall accompany each original application and each notice of amendment. [1975 1st ex.s. c 229 § 4; 1969 c 114 § 5; 1949 c 226 § 27; Rem. Supp. 1949 § 8269-34.]

**18.04.290 Annual permits—Issuance—Duration—Fee—Prerequisite to annual renewal.** (1) The director of motor vehicles shall upon application issue an annual permit to practice public accounting in this state to any person or partnership authorized to engage in such practice in this state under a valid certificate, license, or registration, to any corporation presently authorized to do business under RCW 18.04.350, as now or hereafter amended, and to any candidate for a certificate as a certified public accountant who has passed the entire examination given by the examining committee as provided in RCW 18.04.120 as now or hereafter amended. Such permits shall expire on the thirtieth day of June of each year. The annual fee for a permit to practice public accounting in this state shall be in an amount determined by the board in accordance with this chapter not to exceed fifty dollars. In the event the holder of a permit fails to renew the same prior to the expiration thereof such failure shall not deprive a person or partnership otherwise entitled to such permit of the right to renew the same upon the payment of the fees

which the applicant would have been required to pay if the permit had been renewed prior to its expiration.

(2) Every person practicing public accounting shall as a prerequisite to annual renewal of such permit, submit to the Washington state board of accountancy satisfactory proof of having, during the preceding three years, completed fifteen days or an accumulation of one hundred twenty hours of continuing education recognized and approved by the board: *Provided*, That this subsection shall not apply to applications for renewal until three years after July 16, 1973: *Provided*, That this requirement may be waived by the board for good cause. [1975 1st ex.s. c 229 § 5; 1973 1st ex.s. c 23 § 1; 1969 c 114 § 6; 1949 c 226 § 28; Rem. Supp. 1949 § 8269-35. Prior: 1933 ex.s. c 56 § 2; RRS § 8269-2.]

**18.04.300 Revocation and suspension of certificates, licenses, registrations, or permits.** Upon complying with RCW 18.04.320 the board may revoke or suspend any certificate issued under RCW 18.04.120, or any license issued under RCW 18.04.210, or any registration under RCW 18.04.230 through 18.04.260, or may revoke, suspend, or refuse to renew any annual permit issued under RCW 18.04.290 for any one or any combination of the following causes:

(1) The practice of any fraud or deceit in obtaining a certificate as a certified public accountant, or a license as a licensed public accountant, or in obtaining registration under this chapter, or in obtaining an annual permit under this chapter;

(2) Dishonesty, fraud, or gross negligence in the practice of public accounting;

(3) Violation of any of the provisions of RCW 18.04.340;

(4) Violation of the rules of professional conduct promulgated by the board under the authority granted by RCW 18.04.070;

(5) Conviction of a felony under the laws of any state or of the United States;

(6) Conviction of any crime, an essential element of which is dishonesty or fraud, under the laws of any state or of the United States;

(7) Cancellation, revocation, suspension, or refusal of renewal of the authority to practice as a certified public accountant, as a licensed public accountant, or as a public accountant in any of the United States; or

(8) Violation of any of the provisions of this chapter. [1973 1st ex.s. c 23 § 2; 1961 c 294 § 2; 1949 c 226 § 29; Rem. Supp. 1949 § 8269-36. Prior: 1933 ex.s. c 56 § 3; RRS § 8269-3.]

*Obtaining license by false representation: RCW 9A.60.050.*

**18.04.310 Revocation or suspension of partnership permit.** Upon complying with the provisions of RCW 18.04.320 the board may revoke or suspend the right of any partnership to practice public accounting in this state for any of the following causes:

(1) The revocation or suspension of the certificate, license, or registration of any partner or the revocation, suspension or refusal of renewal of the annual permit of any partner under this chapter; or

(2) The cancellation, revocation, suspension or refusal of renewal of the authority of the partnership or any partner thereof to practice public accounting in any state. [1949 c 226 § 30; Rem. Supp. 1949 § 8269-37.]

**18.04.320 Proceedings for revocation or suspension.**

(1) Proceedings for the revocation or suspension of the certificate, license, or registration of any person or partnership may be initiated by the board on its own motion or by the filing with the board of a statement of charges sworn to by the person making the charges;

(2) Unless the charge or charges be dismissed by the board as unfounded or trivial, the board shall set a date for hearing not later than ninety days after the proceedings are initiated. A copy of the charge or charges, together with a notice of the time and place of hearing before the board shall be served on the accused either personally or by mailing a copy thereof by registered mail to the address of the accused last known to the board not less than thirty days prior to the date set for the hearing;

(3) If after having been so served with a notice of hearing, the accused fails to appear at said hearing, the board may proceed to hear evidence against him and may enter such order as may be justified by the evidence, which order shall be final unless the accused petitions for a review thereof: *Provided, however*, That within thirty days from the date of any such order upon a showing of good cause for failing to appear, the board may reopen said proceedings and may permit the accused to submit evidence in his behalf;

(4) At any hearing the accused may appear in person and by counsel may produce evidence and witnesses on his own behalf, and may cross-examine such witnesses as may appear against him. The accused shall be entitled on application to the board to the issuance of subpoenas to compel the attendance of witnesses and the production of evidence on his behalf;

(5) The board, or any member thereof, may issue subpoenas to compel the attendance of witnesses and the production of documents, and may administer oaths, take testimony, hear proofs and receive exhibits in evidence in connection with or upon hearing under this chapter. In case of disobedience to a subpoena the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence;

(6) The board shall not be bound by technical rules of evidence;

(7) The director of licenses shall revoke or suspend any certificate, license, or registration issued or permitted under this chapter, upon the order of the board, adopted by a majority of the whole board after proceedings under this section; and

(8) Any person adversely affected by any action of the board may obtain a review thereof by filing a written petition for review in the superior court of the county in which he resides within thirty days after the entry of such order. The court will hear the matter de novo, and may sustain, modify or set aside the board's order in whole or in part, or may remand the matter to the board for further action, and may, in its discretion, stay the

effect of the board's order pending its determination of the case. The court's decision shall have the force and effect of a decree in equity. [1949 c 226 § 31; Rem. Supp. 1949 § 8269-38.]

**18.04.330 Reissuance—Reregistration—Modification.** The director of licenses, upon the authority of the board, may reissue the certificate of any certified public accountant whose certificate has been revoked, or the license of any licensed public accountant whose license has been revoked, or may permit the reregistration of any person whose registration has been revoked, or may modify the suspension of any person or partnership whose permit to practice public accounting has been revoked or suspended. [1949 c 226 § 32; Rem. Supp. 1949 § 8269-39.]

**18.04.340 Prohibited practices.** (1) No person shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant, unless such person is the holder of a valid certificate to practice as a certified public accountant in this state under RCW 18.04.120 and holds a valid permit under RCW 18.04.290;

(2) No partnership shall assume or use the title or designation "certified public accountants" or the abbreviation "CPA's" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership is composed of certified public accountants unless such partnership is registered as a partnership of certified public accountants under RCW 18.04.200 and holds a valid permit issued under RCW 18.04.290;

(3) No person shall assume or use the title or designation "licensed public accountant" or the abbreviation "LPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such a person is a licensed public accountant, unless such person is the holder of a license to practice as a licensed public accountant under RCW 18.04.210 and holds a valid permit issued under RCW 18.04.290;

(4) No partnership shall assume or use the title or designation "licensed public accountants" or the abbreviation "LPA's" or any other title, designation, words, letters, abbreviation, card, or device tending to indicate that such partnership is composed of licensed public accountants, unless such partnership is registered as a partnership of licensed public accountants under RCW 18.04.220 and holds a valid permit issued under RCW 18.04.290;

(5) No person shall assume or use the title or designation "public accountant" or the abbreviation "PA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a public accountant, unless such person is the holder of a certificate to practice as a certified public accountant under RCW 18.04.120, or is the holder of a license to practice as a licensed public accountant under RCW 18.04.210, or is registered as a public accountant under

RCW 18.04.240, and holds a valid permit issued under RCW 18.04.290;

(6) No partnership shall assume or use the title or designation "public accountants" or the abbreviation "PA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership is composed of public accountants, unless such partnership is registered as a partnership of certified public accountants under RCW 18.04.200, or as a partnership of licensed public accountants under RCW 18.04.220, or as a partnership of public accountants under RCW 18.04.270, and holds a valid permit issued under RCW 18.04.290;

(7) No person, partnership or corporation shall assume or use the title or designation "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," or any other title or designation likely to be confused with "certified public accountant," "licensed public accountant," and "public accountant" or the abbreviations "CA," "EA," or "LA," or similar abbreviations likely to be confused with "CPA," or "LPA," or "PA";

(8) No person shall sign or affix his name with any wording indicating that he is an accountant or auditor, or with any wording indicating that he has expert knowledge in accounting or auditing, to any accounting or financial statement, or to any opinion on, report on or certificate to any accounting or financial statement, unless he holds a valid permit issued under RCW 18.04.290; *Provided, however,* That the provisions of this subsection shall not prohibit any officer, employee, partner or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of said organization with any wording designating the position, title, or office which he holds in said organization, nor shall the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties as such;

(9) No person shall sign or affix a partnership name, with any wording indicating that it is a partnership composed of accountants or auditors or persons having expert knowledge in accounting or auditing, to any accounting or financial statement, or to any report on or certificate to any accounting or financial statement, unless the partnership holds a valid permit issued under RCW 18.04.290; and

(10) No person shall sign or affix a corporate name, with any wording indicating that it is a corporation performing services as accountants or auditors or composed of accountants or auditors or persons having expert knowledge in accounting or auditing to any accounting or financial statement, or to any report on or certificate to any accounting or financial statement. [1949 c 226 § 33; Rem. Supp. 1949 § 8269-40. Prior: 1937 c 41 § 2; RRS § 8268-2.]

*Advertising falsely: RCW 18.04.380.*

**18.04.350 Excepted practices.** Nothing contained in this chapter 18.04 RCW shall prohibit any person not a certified public accountant or licensed public accountant, or a registered public accountant from serving as an employee of, or as assistant to, a certified public



accountant or licensed public accountant or public accountant or partnership composed of certified public accountants or licensed public accountants or public accountants holding a valid permit to practice under RCW 18.04.290 as now or hereafter amended: *Provided*, That such employee or assistant shall not issue any accounting or financial statement over his or her name.

Nothing in this chapter 18.04 RCW shall prohibit a certified public accountant or a licensed public accountant, or a public accountant registered in another state, or any accountant of a foreign country holding a certificate, degree or license which permits him to practice therein from temporarily practicing in this state on professional business incident to his regular practice.

Nothing in this chapter 18.04 RCW shall prohibit a candidate for a certificate as a certified public accountant, who has passed the entire examination given by the examining committee as provided in RCW 18.04.120 as now or hereafter amended, from engaging in practice as a public accountant for the period of time necessary to acquire the experience required before such a certificate may be issued, provided such person holds a valid permit to practice issued under RCW 18.04.290 as now or hereafter amended.

Nothing contained in this chapter 18.04 RCW shall prohibit any corporation which at the effective date of this chapter has been legally organized in the state of Washington or authorized to do business therein or has engaged in the practice of public bookkeeping and accounting for a period of at least three years prior to such effective date of chapter 18.04 RCW as originally constituted in 1949, from continuing such practice under its corporate form and arrangement.

Corporations continuing to practice under this authority shall register annually as provided in RCW 18.04.290 as now or hereafter amended. [1969 c 114 § 7; 1949 c 226 § 34; Rem. Supp. 1949 § 8269-41.]

**Effective date**—1949 c 226: See note following RCW 18.04.020.

**18.04.360 Practices may be enjoined.** Whenever in the judgment of the board any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of RCW 18.04.340, the board may make application to the appropriate court for an order enjoining such acts or practices and upon a showing by the board that such person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate may be granted by such court. [1949 c 226 § 35; Rem. Supp. 1949 § 8269-42.]

*Injunctions: Chapter 7.40 RCW.*

**18.04.370 Penalty.** Any person who violates any provision of RCW 18.04.340, shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than five hundred dollars, or to imprisonment for not more than six months, or to both such fine and imprisonment. Whenever the board has reason to believe that any person is violating the provisions of this chapter it shall certify the facts to the prosecuting attorney of the county in which such person

resides or may be apprehended and the prosecuting attorney shall cause appropriate proceedings to be brought against such person. Nothing herein contained shall be held to in any way affect the power of the courts to grant injunctive or other relief as above provided. [1949 c 226 § 36; Rem. Supp. 1949 § 8269-43.]

**18.04.380 Advertising falsely—Effect.** The display or uttering by a person of a card, sign, advertisement or other printed, engraved or written instrument or device, bearing a person's name in conjunction with the words "certified public accountant" or any abbreviation thereof, or "licensed public accountant" or any abbreviation thereof, or "public accountant" or any abbreviation thereof, shall be prima facie evidence in any action brought under RCW 18.04.360 and 18.04.370 that the person whose name is so displayed caused or procured the display or uttering of such card, sign, advertisement or other printed, engraved or written instrument or device, and that such person is holding himself out to be a certified public accountant or a licensed public accountant or a public accountant holding a permit to practice under RCW 18.04.290. In any such action evidence of the commission of a single act prohibited by this chapter shall be sufficient to justify an injunction or a conviction without evidence of a general course of conduct. [1949 c 226 § 37; Rem. Supp. 1949 § 8269-44.]

*False advertising: Chapter 9.04 RCW.*

**18.04.390 Property in papers, records, schedules, etc.** In the absence of an express agreement between the certified public accountant, licensed public accountant or public accountant and the client to the contrary, all statements, records, schedules, working papers, and memoranda made by a certified public accountant, licensed public accountant or public accountant incident to or in the course of professional service to clients, except reports submitted by a certified public accountant, licensed public accountant or public accountant to a client, shall be and remain the property of such certified public accountant, licensed public accountant or public accountant. [1949 c 226 § 38; Rem. Supp. 1949 § 8269-45.]

**18.04.400 Transmittal of applications and fees to director of licenses.** All applications for examinations for certificates as provided in RCW 18.04.120, applications for licenses as provided in RCW 18.04.210, and applications for registrations as provided in RCW 18.04.200, 18.04.220, 18.04.230, and 18.04.270, shall be filed with the director of licenses, together with the fees in the required amount, and it shall be the duty of the director of licenses on the next business day after the receipt of any such application and fee, to transmit the application, accompanied by his duplicate receipt for the fee, to the board. [1949 c 226 § 39; Rem. Supp. 1949 § 8269-46.]

**18.04.900 Severability—1949 c 226.** The provisions of this chapter are hereby declared to be severable and if any provision of this chapter shall be held to be unconstitutional it is the legislative intent that such

judgment shall not affect any other section or provision thereof. [1949 c 226 § 40.]

### Chapter 18.08 ARCHITECTS

#### Sections

- 18.08.100 Registration required.
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- 18.08.240 Architects' license account.
- 18.08.250 Exemptions—Use of titles, designations, etc.
- 18.08.260 Corporations, stock companies barred from registration—Architectural firms, principal must be registered and a resident
- 18.08.270 Penalty

*Safety requirements as to doors, public buildings and places of entertainment: RCW 70.54.070.*

**18.08.100 Registration required.** In order to safeguard life, health and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice architecture, shall be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided. It shall be unlawful for any person to practice architecture unless registered as provided in this chapter. [1959 c 323 § 1.]

**18.08.110 Definitions.** The terms "architecture" and "practice of architecture" as used in this chapter mean professional service consisting in whole or in part of consultation concerning floor planning, the aesthetic or structural design of private or public buildings, their equipment or utilities and the responsible supervision of construction or the repair or alteration of buildings, by persons or firms offering such service for a fee.

The term "architect" as used in this chapter means any person who is permitted under this chapter to practice architecture.

The term "director" means the director of licenses of the state of Washington.

The term "board" means the state board of registration for architects. [1959 c 323 § 2.]

**18.08.120 Board of registration—Appointment, qualifications, terms, vacancies, per diem—Travel expenses.** There is hereby created a state board of registration for architects, to consist of five members who shall be appointed by the governor, each of whom shall

have been a resident of this state for at least eight years and shall have at least eight years' experience in the practice of architecture as a licensed or registered architect in responsible charge of architectural work or responsible charge of architectural teaching immediately preceding appointment.

The members of the first board shall serve for the following terms:

One member for one year, one member for two years, one member for three years, one member for four years, one member for five years, from the date of their appointment, or until their successors are duly appointed and qualified. Every member of the board shall receive a certificate of his appointment from the governor and before beginning his term of office shall file with the secretary of state his written oath or affirmation for the faithful discharge of his official duties. On the expiration of the term of each member, the governor shall appoint a successor to serve for a term of five years or until his successor has been appointed and qualified.

The governor may remove any member of the board for cause. Vacancies in the board for any reason shall be filled by appointment for the unexpired term.

Members shall receive twenty-five dollars for each day actually performing board duties or traveling on board business and shall be reimbursed for their travel expenses incurred in carrying out the provisions of this chapter in accordance with RCW 43.03.050 and 43.03-.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 27; 1959 c 323 § 3.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.08.130 Board of registration—Rules.** The board shall adopt rules for its own organization and procedure, and such other rules as it may deem necessary to the proper performance of its duties. All rules adopted by the board shall be filed with the secretary of state and shall be available for public inspection. [1959 c 323 § 4.]

**18.08.140 Application for registration—Qualifications.** An applicant for registration as an architect shall have the following minimum qualifications:

He shall be a citizen of the United States or a person who has declared his intention of becoming a citizen of the United States and shall be of good moral character and at least eighteen years of age.

He must present a specific record of at least eight years of practical experience in the offices of licensed or registered architects or registered professional engineers satisfactory to the board. Graduation from an architectural college approved by the board shall be considered as equivalent to five years of such required experience. Each full year of attendance at an architectural college approved by the board is equivalent to one year of required experience. One year's full time teaching in a school of architecture or architectural engineering may be considered equivalent to one year of practical experience. Graduation from a five year course in architecture or architectural engineering from a university or college in the state of Washington shall be deemed graduation



from an approved architectural college. The board shall approve other architectural colleges which it finds to present a quality and scope of instruction at least equal to the quality and scope of instruction of the aforementioned institutions of the state of Washington. This section, except for the requirements of age, good moral character and citizenship or intended citizenship, is not applicable to any person who, at midnight, June 10, 1959, has graduated from or is enrolled as a fourth or fifth year student in an architectural college approved by the board. [1971 ex.s. c 292 § 18; 1959 c 323 § 5.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**18.08.150 Application for examination—Fee.** All applications for examination must be filed with the director not less than sixty days prior to the date set for the examination. The application fee shall be determined by the director as provided in RCW 43.24.085 as now or hereafter amended. Should the director deny issuance of a certificate of registration to any applicant, the examination fee shall not be refundable. Graduates of an approved architectural college may apply for and take the examination but shall not be granted certificates of registration until their required office experience is completed. [1975 1st ex.s. c 30 § 1; 1959 c 323 § 6.]

**18.08.160 Examinations—Reexaminations—Certificate of registration.** Examination of applicants for certificates of registration shall be held at least annually at such times and places as the director may determine. The board shall determine from the examination and the material submitted with the applications whether or not the applicants possess sufficient knowledge, ability and moral fitness to safely and properly practice architecture and hold themselves out to the public as persons qualified to practice architecture. The scope of the examination and methods of procedure shall be prescribed by the board with special reference to building mechanics, structural design, supervision, materials, specifications and construction; history of architecture in relation to architectural design; planning and design, practical knowledge of sanitary and electrical installation, heating and ventilating and other similar subjects related to the practice of architecture. Applicants who fail to pass any subjects shall be permitted to retake the examination in the subjects which they shall have failed. A passing grade in any subject will exempt the applicant from examination in that subject for a period of five years. If the entire examination is not successfully completed within five years, a retake of the entire examination shall be required. A certificate of registration shall be granted by the director to all qualified applicants who shall be certified by the board as having passed the required examination and as having given satisfactory proof of completion of the required experience. [1959 c 323 § 7.]

**18.08.170 Registration of prior licensees—Persons permitted to carry on occupations.** All persons holding licenses as architects under chapter 205 of the Laws of

1919, in good standing at the effective date of this chapter, shall be registered as architects without examination.

Nothing in this chapter shall be construed to prohibit any person, firm or corporation from lawfully carrying on in this state as part of his or its principal occupation work falling within the definitions contained in this chapter of the terms "architecture" or "practice of architecture" from continuing such occupation so long as he or it shall not hold himself or itself out to the public as, or represent himself or itself to be, an architect. This section shall be deemed to specifically exclude home designers and contractors not representing themselves to be architects. This specific exclusion shall not affect the rights of others excluded by the general language of this section. [1959 c 323 § 8.]

**Reviser's note:** (1) Chapter 205, Laws of 1919, repealed by 1959 c 323 § 19, was formerly codified as RCW 18.08.010-18.08.090;

(2) The effective date of this chapter is midnight June 10, 1959, see preface 1959 session laws.

**18.08.180 Registration of out-of-state registrant—Reciprocity.** The director may, upon payment of the current registration fee, grant a certificate of registration without examination to an applicant who is a registered architect in another state who has had at least the equivalent experience in responsible charge of architectural work or responsible charge of architectural teaching required by RCW 18.08.140: *Provided*, That such applicant presents evidence that he has satisfactorily completed a written examination equivalent to the national council of architects registration board examination: *And provided further*, The state in which the applicant is registered grants reciprocal privileges to architects registered in this state. [1959 c 323 § 9.]

**18.08.190 Expiration of certificate—Renewal—Fee—Withdrawal of registrant.** Certificates of registration shall expire on the last day of June following their issuance or renewal. The director shall set the yearly fee for renewal which fee shall be determined by the director as provided in RCW 43.24.085 as now or hereafter amended. Renewal may be effected during the month of June by payment to the director of the fee set. In case any registrant fails to pay the renewal fee before thirty days after the due date, the renewal fee shall be the current fee plus an amount equal to one year's fee: *Provided*, That any registrant in good standing may withdraw from practice by giving written notice to the director, and may thereafter resume practice at any time upon payment of the then current annual renewal fee. [1975 1st ex.s. c 30 § 2; 1971 ex.s. c 266 § 1; 1959 c 323 § 10.]

**18.08.200 Revocation, refusal to renew certificate—Grounds.** The director may refuse to renew or may revoke a certificate of registration to practice architecture in this state upon the following grounds:

That the holder of the certificate of registration is falsely impersonating a practitioner or former practitioner.

That the holder of a certificate is practicing under a corporate name or under a name implying that the responsibility for the work is assumed by a registered architect who is, in fact, not in responsible charge.

That the holder of the certificate of registration is guilty of fraud or deceit or of gross negligence, gross incompetency or gross misconduct in the practice of architecture.

For the conviction of a crime involving moral turpitude.

That the holder of the certificate of registration permitted his seal to be affixed to any plans, specifications or drawings that were not prepared by him or under his personal supervision by employees subject to his direction and control.

That the holder of the certificate of registration received unbeknown to a party for whom he is doing work, rebates, commissions, grants of money or favors which he is not entitled to or justified in receiving.

That the holder of the certificate is practicing contrary to the provisions of this chapter.

That the holder of the certificate has committed fraud in applying for or obtaining a certificate. [1959 c 323 § 11.]

*Obtaining license, etc., by false pretenses: RCW 9A.60.050.*

**18.08.210 Revocation, refusal to renew certificate—Hearing—Subpoenas—Witnesses—Order—Appeal.** In all cases where the director shall refuse to renew or shall revoke a certificate of registration the holder shall be entitled to a hearing and shall be given twenty days' notice in writing by the director thereof. The notice shall specify the offenses with which the accused person is charged and shall also give the day and place where the hearing is to be held. The hearing shall be held in the county seat of the county in which the accused person resides.

The director may issue subpoenas to compel the attendance of witnesses, or the production of books or documents. The accused shall have opportunity to make his defense, and may have such subpoenas issued as he desires. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath which may be administered by the director. Testimony shall be taken in writing, and may be taken by deposition under such rules as the director may prescribe.

The director shall hear and determine the charges, make findings and conclusions upon the evidence produced, file them in his office, and serve upon the accused a copy of such findings and conclusions.

Any order refusing renewal of registration or revoking registration shall be in writing signed by the director, stating the grounds upon which such order is based and the aggrieved person shall have the right to appeal from such order within fifteen days after a copy thereof is served upon him, to the superior court of the county in which the aggrieved person resides, which shall hear the matter de novo.

An appeal shall lie to the supreme court or the court of appeals from the judgment of the superior court as

provided in other civil cases. [1971 c 81 § 58; 1959 c 323 § 12.]

*Witnesses—Compelling attendance: Chapter 5.56 RCW.*

**18.08.220 Reinstatement of certificate—Replacement of lost or destroyed certificate, charge.** The director may reinstate a certificate of registration to any person whose certificate has been revoked, if three or more members of the board vote in favor of such reissuance, whenever the board shall find that the circumstances or conditions that brought about the revocation are not likely to recur and that the person is then sufficiently trustworthy and reliable that the best interests of the public will be served by reinstatement of his registration. A new certificate of registration to replace any certificate lost, destroyed, or mutilated may be issued by the director and a charge determined by the director as provided in RCW 43.24.085 as now or hereafter amended shall be made for such issuance. [1975 1st ex.s. c 30 § 3; 1959 c 323 § 13.]

**18.08.230 Certificate of registration, issuance, contents—Seal, use.** The director shall issue a certificate of registration upon payment of the registration fee as provided in this chapter to any applicant who has satisfactorily met all the requirements for registration. All certificates of registration shall show the full name of the registrant, shall have a serial number and shall be signed by the chairman and the secretary of the board and by the director.

The issuance of a certificate of registration by the director shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a registered architect.

Each registrant shall obtain a seal of the design authorized by the board, bearing the registrant's name and the legend "registered architect" Drawings prepared by the registrant shall be stamped with said seal when filed with public authorities. It shall be unlawful for any one to stamp or seal any document with the seal after the certificate of registrant named thereon has expired or been revoked or while the certificate is suspended. [1959 c 323 § 14.]

**18.08.240 Architects' license account.** There is established in the state general fund the architects' license account, into which all fees paid pursuant to this chapter shall be paid. [1959 c 323 § 15.]

**18.08.250 Exemptions—Use of titles, designations, etc.** Nothing contained in this chapter shall be deemed to prevent or affect in any way the practice of engineering or land surveying as defined in chapter 18.43 RCW except that no person shall use the designation "architect", "architectural" or "architecture" unless licensed under the provisions of this chapter; nor to prevent the preparations of working drawings, details and shop drawings by persons other than architects for use in connection with the execution of their work or in connection with proposals to be submitted for securing work or contracts; nor to prevent employees of architects from acting under the instruction, control or supervision of

their employers; nor to apply to the supervision by builders or superintendents employed by such builders of the construction or structural alteration of buildings or structures: *Provided, however*, That nothing herein contained shall be construed to permit any person not licensed as provided in this chapter to use the title "architect", or any title, sign, card or device to indicate that such a person is an architect. This chapter shall not apply to landscape architects or naval architects who do not engage in or profess to engage in the practice of architecture. [1959 c 323 § 16.]

**18.08.260 Corporations, stock companies barred from registration—Architectural firms, principal must be registered and a resident.** No corporation or stock company shall be entitled to receive a certificate of registration to practice architecture. When an architectural firm maintains or professes to maintain an office or facility within the state for the purpose of practicing architecture, a principal of the firm must be an architect registered pursuant to this chapter and a resident of this state. [1959 c 323 § 17.]

**18.08.270 Penalty.** Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor. [1959 c 323 § 18.]

### Chapter 18.09 ATTORNEYS AT LAW

See chapter 2.44 RCW, attorneys at law.

### Chapter 18.11 AUCTIONEERS

#### Sections

- 18.11.010 Records.
- 18.11.020 Inspection—Information.
- 18.11.030 Violation—Penalties.

*Auctions of jewelry or appliances: Chapter 18.12 RCW.*

*Mock auctions: RCW 9.45.070.*

*Pawnbrokers and second-hand dealers: Chapter 19.60 RCW.*

**18.11.010 Records.** Auctioneers are hereby required in all cases where property is offered them to be sold at auction, and when there is doubt or uncertainty on the part of the auctioneer as to the rightful ownership of such property, to keep in a book provided for the same, a record or inventory of the property so offered for sale, together with any marks or brands found on such property; also a minute description and record of the person or persons offering such property for sale. [1890 p 458 § 1; RRS § 5848.]

**18.11.020 Inspection—Information.** The records required to be kept in RCW 18.11.010 shall be open at all times to inspection by any one who may be interested in property which may have been stolen or unlawfully acquired, and auctioneers are hereby required in any case to give all information they may have of property received and sold, or offered for sale by them. [1890 p 458 § 2; RRS § 5849.]

**18.11.030 Violation—Penalties.** Any person or persons violating any of the provisions of this chapter shall, upon conviction thereof, be fined in any sum not less than one hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail not to exceed one year, or both fine and imprisonment, at the discretion of the court. [1890 p 458 § 3; RRS § 5850.]

### Chapter 18.12 AUCTIONS OF JEWELRY OR APPLIANCES

#### Sections

- 18.12.010 Definitions.
- 18.12.020 License required.
- 18.12.030 Application requisites—Place of sale—Prior conviction of applicant.
- 18.12.040 Application requisites—Prior conviction of employee.
- 18.12.050 Application requisites—In general.
- 18.12.060 Application requisites—Additions to inventory—Prior auctions.
- 18.12.070 Application requisites—Inventory—Goods to be marked.
- 18.12.080 Application requisites—Verification.
- 18.12.090 License in addition to any other.
- 18.12.100 Duration of license.
- 18.12.110 License—Fee—Bond—Right of action—Liability.
- 18.12.120 County commissioners may suspend, restore license—Appeal.
- 18.12.130 Sale of noninventoried articles prohibited—Supplemental inventory.
- 18.12.140 Articles stocked within sixty days prior to application.
- 18.12.150 Merchandise to be truly represented and inventory made available.
- 18.12.160 Sale of falsely described articles prohibited.
- 18.12.170 Notice that purchases may be returned.
- 18.12.180 Applicant's responsibility to comply with chapter.
- 18.12.190 When chapter does not apply.
- 18.12.200 Penalty.
- 18.12.900 Severability—1953 c 239.

*Auctioneers: Chapter 18.11 RCW.*

*Mock auctions: RCW 9.45.070.*

*Pawnbrokers and second-hand dealers: Chapter 19.60 RCW.*

**18.12.010 Definitions.** When used herein the following terms shall have the following meanings:

"Jewelry" includes gold, silver, plated ware, precious or semiprecious stones, mounted or unmounted, watches, clocks, and goods, wares and merchandise commonly classified as jewelry and commonly offered for sale in jewelry stores.

"Appliances" means new, as distinguished from used, radios, television sets, washing machines, refrigerators, toasters, food mixers, waffle irons, and similar items commonly sold in retail jewelry stores.

"Auction" means the sale of jewelry and appliances at either private or public sale, upon oral or written bids, to the highest bidder, and shall include all such sales although denominated as "action" sales or by any similar words. [1953 c 239 § 1.]

**18.12.020 License required.** It shall be unlawful to sell, offer for sale, or attempt to sell at auction any jewelry or appliances unless a license has been obtained as hereinafter provided. [1953 c 239 § 2.]

**18.12.030 Application requisites—Place of sale—Prior conviction of applicant.** The county commissioners, in the county in which the auction sale is to be held, shall grant licenses for jewelry and appliance auctions only when the application therefor indicates:

(1) The sale is to be held at the applicant's regularly established place of business, or at the place wherein his regular business has been operated for a period of at least one year prior to the application.

(2) The applicant has not been convicted of violating this chapter within a period of six years just prior to the date of application. [1953 c 239 § 3.]

**18.12.040 Application requisites—Prior conviction of employee.** The application shall indicate that no person will be employed in any manner in the conduct of the auction sale who has been convicted of any violation of this chapter within a period of six years prior thereto. [1953 c 239 § 7.]

**18.12.050 Application requisites—In general.** The application shall also indicate the name, residence, address and business address of the applicant; the purpose for which the sale is to be held; the type of business engaged in during the prior two years, if any, and its location; whether the proposed sale is to be held at the applicant's existing regularly established place of business; whether the applicant will personally participate at the auction sale; whether any additions to the stock to be sold at auction have been made within sixty days prior thereto; the name, address and occupational history for the preceding two years of any person who will participate in conducting the sale. [1953 c 239 § 4.]

**18.12.060 Application requisites—Additions to inventory—Prior auctions.** The application shall also indicate whether the applicant will make or permit additions to be made to the stock described in the inventory, hereinafter referred to, after his filing the said inventory; whether he has conducted any auction of jewelry or appliances within a period of five years prior thereto, and if so, a statement when and where it occurred. [1953 c 239 § 5.]

**18.12.070 Application requisites—Inventory—Goods to be marked.** The application shall have attached thereto a detailed inventory listing each article to be sold, together with an inventory number for each article. Prior to the auction, the applicant shall cause to be attached to each article the inventory number, and this marking or tag must be attached to the article at all times during the duration of the auction sale. [1953 c 239 § 6.]

**18.12.080 Application requisites—Verification.** The applicant shall verify under oath or affirmation that all the data and statements in the application and the inventory are true and correct. [1953 c 239 § 8.]

**18.12.090 License in addition to any other.** Any such license shall be in addition to a license required by the

ordinance of any municipality in which said sale is to be held. [1953 c 239 § 19.]

**18.12.100 Duration of license.** No auction sale of jewelry or appliances shall be licensed for a period of more than thirty consecutive days, legal holidays excepted. [1953 c 239 § 14.]

**18.12.110 License—Fee—Bond—Right of action—Liability.** In addition to the requirements of RCW 18.12.010 through 18.12.080, 18.12.100, and 18.12.130 through 18.12.180, before issuance of a license for an auction of jewelry or appliances, the applicant shall pay therefor a fee of two hundred and fifty dollars, and shall file with the county commissioners a bond in a form approved by the county commissioners, executed by a surety company authorized to do business in this state, in an amount equal to one-half of the cost value of the articles inventoried for sale, said bond shall be approved by the county commissioners. Said bond shall run to the state of Washington and shall be conditioned that it is for the use or benefit of the person who may be damaged by the violation of this chapter by the licensee, his employees or agents, or who may have the cause of action against said licensee, his employees or agents, by reason of any matters arising out of the conduct of said auction sale. Any such person shall have, in addition to any other right of action which he may have, a right of action on such bond for all damages not exceeding one thousand dollars, and the aggregate liability of the surety upon said bond for all claims which may arise thereunder shall not exceed the sum specified in said bond. The county commissioners shall, upon compliance with all the above requirements, issue a license to hold an auction for the sale of jewelry and appliances. [1953 c 239 § 16.]

**18.12.120 County commissioners may suspend, restore license—Appeal.** The county commissioners may suspend and restore licenses as they deem reasonable or necessary to assure compliance with the provisions of this chapter. Appeal from such decision of county commissioners may be made within ten days from date of filing of said decision of said county commissioners, to the superior court by the applicant or any aggrieved person. Said appeal may be taken by the issuance of an order to show cause directed to said county commissioners or by any other appropriate legal remedy afforded by law. Said appeal shall be speedily heard by said superior court under the rules of said superior court. [1953 c 239 § 17.]

**18.12.130 Sale of noninventoried articles prohibited—Supplemental inventory.** No article shall be sold at the auction for which the application was obtained unless it was listed in the inventory accompanying the application, except that such articles may be sold if listed on a supplemental inventory subsequently approved by a majority of the board of county commissioners of the county in which such auction is held. [1953 c 239 § 9.]

**18.12.140 Articles stocked within sixty days prior to application.** No article shall be listed in the inventory or sold at the auction which was purchased or stocked by the applicant within sixty days prior to the application for auction, except that such articles may be sold if listed on a supplemental inventory subsequently approved by a majority of the board of county commissioners of the county in which such auction is held. [1953 c 239 § 10.]

**18.12.150 Merchandise to be truly represented and inventory made available.** At all such auctions the applicant, and his employees and agents, shall represent to the public the true manufacture, quality and kind of said articles. If requested by anyone, a copy of the inventory will be shown. [1953 c 239 § 11.]

**18.12.160 Sale of falsely described articles prohibited.** No article shall be sold at auction which has been falsely described or concerning which any false statement has been made by the applicant or his employees or agents. [1953 c 239 § 12.]

**18.12.170 Notice that purchases may be returned.** The applicant shall cause to be displayed in a prominent place on the premises where the auction is being conducted a notice that all merchandise purchased may be returned, if it is at the time in the same condition as when purchased, for the amount paid, if returned within forty-eight hours from time of purchase. The said notice shall be of sufficient size as to be readily discernible by the bidders. [1953 c 239 § 13.]

**18.12.180 Applicant's responsibility to comply with chapter.** The applicant will be responsible for compliance with this chapter whether he is present at or absent from the auction sale. [1953 c 239 § 15.]

**18.12.190 When chapter does not apply.** This chapter shall not apply to any sale of second-hand jewelry or appliances, judicial sales or government sales, or sales by any executor, administrator, guardian, receiver, or trustee in bankruptcy so authorized by any court of competent jurisdiction. [1953 c 239 § 18.]

**18.12.200 Penalty.** Any violation of this chapter is punishable, upon conviction, by a fine not exceeding five hundred dollars or by confinement in the county jail for not exceeding six months, or both. [1953 c 239 § 20.]

**18.12.900 Severability—1953 c 239.** If any section, subsection, phrase or provision of this chapter should be held invalid by any court for any reason, such invalidity shall in no way affect the validity of the remainder of the chapter. [1953 c 239 § 21.]

### Chapter 18.15

#### BARBERING—MEN'S HAIRSTYLING

##### Sections

- 18.15.010 Definition—Exceptions.  
18.15.020 License required—Barbering—Exceptions.

- 18.15.040 Qualifications of out-of-state licensees—Application for license—Fee—Notice of examination.  
18.15.045 License to practice barbering—When final examination not required.  
18.15.050 Examinations—Time and place—Scope—License or permit—Service under licensed barber—Reexamination—Manager-operator licensee eligible for barbering license.  
18.15.051 Barber examining committee—Created—Appointment—Terms—Removal—Vacancies.  
18.15.052 Barber examining committee—Qualifications of members.  
18.15.053 Barber examining committee—Meetings—Quorum.  
18.15.054 Barber examining committee—Secretary—Duties.  
18.15.055 Barber examining committee—Compensation—Per diem—Travel expenses.  
18.15.056 Barber examining committee—Rules and regulations.  
18.15.060 Annual renewal of license or permit.  
18.15.065 Barber shop location licenses—Fees, renewals, etc.  
18.15.070 Register of licenses.  
18.15.080 Display of licenses.  
18.15.090 Barber colleges.  
18.15.095 Barber college location licenses—Fees, renewals, etc.  
18.15.097 Instructors—License required—Application—Qualifications—Examination—Renewal—Fees.  
18.15.100 Student barbers—Student certificate—Fee—Application for barber's permit.  
18.15.110 Student barbers—Course of instruction—Text-books—Certificate.  
18.15.120 Rules and regulations—Inspection—Penalty.  
18.15.125 Inspections by examining committee—Fee.  
18.15.130 Revocation of licenses—Grounds for.  
18.15.140 Revocation of licenses—Notice—Hearing.  
18.15.150 Reinstatement.  
18.15.160 Violations—Penalties.  
18.15.200 Men's hairstyling—Legislative declaration.  
18.15.210 Men's hairstyling—Definition.  
18.15.220 Men's hairstyling—Certificate—Fee—Examination—Limitation.  
18.15.230 Men's hairstyling—Barber examining committee—Duties.  
18.15.240 Men's hairstyling—Barber examining committee—Rules and regulations.  
18.15.250 Men's hairstyling—Barber examining committee—Meetings.  
18.15.900 Severability—1923 c 75.

**18.15.010 Definition—Exceptions.** Any one or any combination of the following practices (when done upon the upper part of the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments, and when done for payment, either directly or indirectly, or without payment, for the public generally upon male or female) constitutes the practice of barbering: (1) Shaving or trimming the beard or cutting the hair; (2) giving facial and scalp massage or treatments with oils, creams, lotions, or other preparations, either by hand or mechanical appliances; (3) singeing, shampooing or dyeing the hair, or applying tonics; (4) applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to the scalp, face, neck or upper part of the body: *Provided*, That the provisions of this chapter shall not apply to any person employed in, or engaged in the operation of any beauty shop or hair dressing establishment or to persons engaged in the care or treatment of patients in health facilities or engaged in the care of residents of boarding homes and similar residential care facilities: *Provided, further*, That a certified men's hair stylist may perform the following additional practices: (1) Hair analysis, reconditioning, and restoration procedures, as required; (2) the chemical processing

of the hair, including temporary or permanent body waving, curl correction, or straightening, as well as the application of other chemicals in the process of barbering; and (3) the fitting and servicing of wigs, wefts, and hair pieces. [1973 1st ex.s. c 148 § 1; 1957 c 52 § 1; 1927 c 211 § 1; 1923 c 75 § 1; RRS § 8277-1. Prior: 1901 c 172 § 2.]

**Persons licensed under prior laws:**

**1923 c 75 § 8:** "Any person who shall be licensed to practice the occupation of barber at the time this act shall take effect shall be authorized to continue to practice under said license until the first day of July next following the date of expiration named in said license, and thereafter he shall pay an annual license renewal fee as provided in the case of persons licensed by examination under this act."

**1923 c 78 § 9:** "Every person who shall have been continuously and lawfully engaged in practicing the occupation of barber in this state without license for six months prior to the date when this act shall take effect, shall within six months thereafter, make application for license to the state treasurer, on forms furnished by the director of licenses, which said application, together with a fee of five dollars, to be paid by said applicant, shall be disposed of in the manner provided by law in the case of applications for examination for license. It shall be the duty of the secretary of the department of licenses, upon the receipt of such application, accompanied by the treasurer's duplicate receipt for the fee, to issue to said applicant a license which shall authorize the said applicant to practice the occupation of barber in the state of Washington until the first day of July, 1924, and thereafter said applicant shall pay an annual license renewal fee as provided in the case of persons licensed by examination under this act."

**1937 c 199 § 5:** "A license to practice barbering shall be issued by the director of licenses, without examination, to all persons who shall, within six months from the taking effect of this act, file with the director of licenses affidavit that he or she has been engaged in the practice of barbering in an unincorporated city or town in this state for at least one year prior to the taking effect of this act; the application for said license shall be accompanied by an affidavit of two reputable persons to the effect that they are acquainted with the applicant and believe him or her to be a person of good moral character; which applicant at time of making said application shall pay the said director of licenses the sum of five dollars and thereafter shall be permitted to continue the practice of barbering upon payment of annual renewal fee as provided in the case of persons licensed by examination under this act."

**18.15.020 License required—Barbering—**  
**Exceptions.** It shall be unlawful for any person to practice barbering as hereinbefore defined unless he shall first have obtained and holds a valid license to practice barbering in this state, except as follows: (1) Any student barber holding a valid student barber certificate duly issued under this chapter shall be entitled to study the practice of barbering in any barber school or barber college authorized under this chapter, and (2) any person holding a valid permit to practice barbering duly issued under this chapter shall be entitled to practice barbering in accordance with the provisions thereof in any barber shop managed and operated by a barber duly licensed to practice barbering in this state. Likewise, it shall be unlawful for any person, firm or corporation to hire or employ any person to engage in the practice of barbering in this state unless such person then holds a valid license to practice barbering as provided in this chapter, except as follows: (a) any barber school or barber college duly authorized under this chapter shall be entitled to grant to any person holding a valid student barber certificate admission to study the practice of barbering therein, and (b) any barber duly licensed to practice barbering in this state and managing and operating a barber shop shall be entitled to have therein

practicing barbering, under his direct personal supervision, one person holding a valid permit to practice barbering duly issued under this chapter: *Provided, however,* That shops regularly employing two or more licensed barbers, two such permittees may be employed, but in no event can more than two such persons practice under the authority of such a valid permit in any barber shop managed and operated by him. [1967 c 223 § 2; 1951 c 16 § 1; 1949 c 51 § 1; 1937 c 199 § 1; 1929 c 209 § 1; 1923 c 75 § 2; Rem. Supp. 1949 § 8277-2. Prior: 1901 c 172 § 1.]

**18.15.040 Qualifications of out-of-state licensees—Application for license—Fee—Notice of examination.** Any person of good moral character, free from contagious or infectious disease, at least eighteen years of age, having a diploma showing graduation from an eighth grade grammar school or capable of proving an equivalent education, and holding a license authorizing him to practice barbering in any one of the other states of the United States, the District of Columbia, or any territory of the United States or any foreign country (if such person is lawfully entitled to reside in the United States) and submits with his application a certificate of graduation from a barber school or college with requirements equal to the requirements of approved barber schools of this state, or provides an affidavit from the barber board of the state in which he is licensed, that applicant has graduated from said barber school or college of that state, shall be deemed qualified to make application for a license to practice barbering in this state.

Any applicant who is licensed in a foreign country shall furnish the board with an authenticated English translation of his license, applicable licensing law, and other supporting documents. Every applicant for such license, qualified under either of the foregoing provisions, shall file his application in the manner provided by law, on forms prescribed by the director. Each such application shall have attached thereto the certificate of a licensed physician and surgeon that the said applicant is not afflicted with any contagious or infectious disease, and a certificate signed by two reputable citizens living in the community in which the applicant now resides or has recently resided that he is of good moral character. Each application shall be accompanied by two signed photographs of the applicant and a photostatic copy of his license authorizing him to practice barbering as hereinbefore provided, and a certificate of graduation or affidavit from barber board as aforementioned. Every applicant for such license shall pay a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, which fee shall accompany his application. The director upon the receipt of such application and fee shall notify the applicant of the particular date, city, and place where he is to appear for his examination for a license to practice barbering in this state. [1975 1st ex.s. c 30 § 4; 1967 c 223 § 3; 1957 c 101 § 1; 1951 c 16 § 2; 1949 c 51 § 2; 1937 c 199 § 2; 1923 c 75 § 3; Rem. Supp. 1949 § 8277-3. Prior: 1901 c 172 § 10.]

**18.15.045 License to practice barbering—When final examination not required.** Any person with a permit to barber in this state who is indentured as a barber apprentice pursuant to chapter 49.04 RCW and who has successfully completed the related training course as approved by the barber examining committee and the state department of labor and industries, apprenticeship council, and who has served the required number of months under the direct supervision of a licensed barber of this state as provided in this chapter, shall be deemed qualified to receive a license to practice barbering in this state without a final examination. Upon application and payment of a sum equal to the annual license renewal fee, the director shall issue him a license to practice as a barber in this state: *Provided*, That the applicant meets all of the other requirements of this chapter. [1973 1st ex.s. c 148 § 3.]

**18.15.050 Examinations—Time and place—Scope—License or permit—Service under licensed barber—Reexamination—Manager-operator licensee eligible for barbering license.** Barber examinations shall be held six times in each year in the months of February, April, June, August, October, and December; and on such particular dates, within the said times, and in such particular cities and places as the director of motor vehicles shall determine. Every applicant for a license or permit to practice barbering in this state shall be required to take an examination in each branch as follows: (1) Sanitation as applied to the practice of barbering, (2) sterilization as applied to the practice of barbering, (3) and as to whether he has sufficient knowledge of the common contagious and infectious diseases of the face, skin, and scalp, to avoid spreading thereof in the practice of barbering; (4) and as to whether he has sufficient knowledge of the use of chemicals, creams, lotions, and solutions as applied in the practice of barbering; (5) and in any other portion of the curriculum as required by this law; and such applicant shall be required to demonstrate to the barber examining committee his professional skill and ability in performing the following barber services: (1) Haircutting, (2) shaving, (3) massaging, (4) shampooing, and (5) conditioning his barber tools.

Any applicant, other than one applying under the provisions of RCW 18.15.040, who secures a passing grade in each branch of not less than seventy-five percent in his examination and who demonstrates to the satisfaction of the barber examining committee that he possesses the required professional skill and ability to properly perform each of the said barber services, not less than sixty-five percent of perfect, and possesses the other particular qualifications provided in this chapter, shall be entitled to receive, and the director shall issue to him, a permit to practice barbering in this state. Every person receiving such permit shall be required to serve one and one-half years (eighteen months) under the direct supervision of a licensed barber. A year shall be construed to mean a period of not less than fifty-two weeks consisting of forty hours per week of service by the permittee. He must then pass an examination not

less than seventy-five percent of perfect, and demonstrate to the satisfaction of the barber examining committee that he possesses the required professional skill and ability to properly perform each of the said barber services, not less than seventy-five percent of perfect, and possesses the qualifications required in this chapter, after which the director shall issue to him a license to practice barbering.

Any applicant under the provisions of RCW 18.15.040 who secures a grade in each branch of not less than seventy-five percent in his examination and who demonstrates to the satisfaction of the barber examining committee that he possesses the required professional skill and ability to properly perform each of the said barber services, not less than seventy-five percent of perfect, and possesses the other particular qualifications provided in this chapter, shall be entitled to receive, and the director shall issue to him a license to practice barbering in this state, until the first day of July next following the issuance of such license. Every applicant for such license shall pay a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, which fee shall accompany his application. The director upon receipt of such application and fee shall notify the applicant of the particular date, city, and place where he is to appear for his examination for a license or permit to practice barbering in this state.

Any unsuccessful applicant for a license or permit to practice barbering in this state shall be entitled to appear at any subsequent barber examination and be reexamined for a license or permit, as the case may be, to practice barbering in this state upon the payment of a reexamination fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, and which reexamination fee shall be paid at the time of application for such reexamination, said application and fee to be submitted to the director at least fifteen days prior to an examination date: *Provided*, That an unsuccessful applicant for a permit shall return to an approved school or college for an additional two hundred fifty hours of instruction before he may be reexamined.

Any person who applies for a license or permit to practice barbering under this chapter, and who does not appear for examination at the time, date, and place as notified by the director, shall forfeit application fees, and must reapply with a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, which fee shall accompany his new application.

Any person holding a current manager-operator license of this state issued under the provisions of chapter 18.18 RCW shall be deemed qualified to apply to the director to be examined for a license to practice barbering, pursuant to the provisions of this chapter: *Provided*, That any such applicant who fails said examination must then enroll in a licensed barber school of this state and complete a course of instruction of not less than two hundred fifty hours before applying to be reexamined for a barber license. The curriculum for such course of instruction shall be determined by the barber examining committee and approved by the director. [1975 1st ex.s. c 30 § 5; 1973 1st ex.s. c 148 § 2; 1967 c 223 § 4; 1959 c



84 § 4; 1951 c 16 § 3; 1949 c 51 § 4; 1929 c 209 § 3; 1927 c 211 § 5; 1923 c 75 § 6; Rem. Supp. 1949 § 8277-6.]

**18.15.051 Barber examining committee—Created—Appointment—Terms—Removal—**

**Vacancies.** Barber examinations shall be conducted by the barber examining committee. The barber examining committee shall consist of five members appointed by the governor, who shall designate one of the committee members to serve both as chairman and secretary.

The first terms for members of the examining committee shall be as follows: One member for five, four, three, two and one years respectively. Thereafter the terms shall be for five years and until their successors are appointed and qualified.

The examining committee shall be under the direct supervision of the director of licenses.

Members may be removed by the governor for cause.

Any vacancy shall be filled by the governor within ninety days after it occurs by an appointment for the remainder of the unexpired term. [1957 c 101 § 7.]

**18.15.052 Barber examining committee—Qualifications of members.** Any person appointed to the examining committee shall: (1) Hold a valid barber's license of this state; (2) have been a resident of this state for at least three years immediately preceding his appointment; (3) have been engaged in the actual practice of barbering for at least five years immediately preceding his appointment; (4) not be connected directly or indirectly with the manufacture, renting, or selling of barber appliances and supplies; and (5) not have been connected directly or indirectly with any barber school or barber college for one year immediately preceding his appointment. [1967 c 223 § 5; 1957 c 101 § 8.]

**18.15.053 Barber examining committee—Meetings—Quorum.** The committee shall meet to hold examinations and to conduct such business necessary to carry out the provisions of this law. Special meetings may be called upon notice from the secretary. A majority of the committee shall constitute a quorum. [1967 c 223 § 6; 1957 c 101 § 9.]

**18.15.054 Barber examining committee—Secretary—Duties.** The secretary of the examining committee shall: (1) Keep a record of all the proceedings of the committee; (2) arrange for and conduct examination; (3) deliver all records and findings of the examining committee as a result of the examinations and hearings to the director; and (4) perform any other duties required by law. [1957 c 101 § 10.]

**18.15.055 Barber examining committee—Compensation—Per diem—Travel expenses.** The secretary shall have a full time position with a salary to conform with standards set by the department of licenses for similar positions.

Each member of the examining committee shall receive as compensation twenty-five dollars for each

day's attendance at meetings of the committee. Members including the secretary shall be reimbursed for travel expenses incurred in the actual performance of their duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 28; 1967 c 188 § 1; 1957 c 101 § 11.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.15.056 Barber examining committee—Rules and regulations.** The examining committee shall promulgate such rules and regulations as it deems necessary not inconsistent with this chapter, subject to the director's approval, and it shall perform all acts necessary to effectuate the purposes of this chapter. [1967 c 223 § 8; 1957 c 101 § 12.]

**18.15.060 Annual renewal of license or permit.** Every person licensed as a barber or a permit barber shall pay an annual license fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, for a license or permit renewal certificate on or before the thirtieth day of June each year. Failure to pay the annual license or permit renewal fees before delinquency shall work a forfeiture of the license or permit, but the license or permit may be renewed within three years thereafter without examination upon application therefor by the licentiate or permittee, and payment of a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended plus all lapsed fees. Should the licentiate or permittee allow his license or permit to elapse for more than three years, he must be reexamined as for a new license or permit. [1975 1st ex.s. c 30 § 6; 1973 1st ex.s. c 148 § 4; 1971 ex.s. c 266 § 2; 1967 c 223 § 9; 1957 c 101 § 14; 1929 c 209 § 4; 1927 c 211 § 6; 1923 c 75 § 7; RRS § 8277-7.]

**18.15.065 Barber shop location licenses—Fees, renewals, etc.** It shall be unlawful for any firm, corporation, or person to operate a barber shop without a shop location license for each barber shop. Application therefor shall be made to the director of motor vehicles. Each application for a license shall be accompanied by a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended.

Upon receipt of the application and fee, the director shall issue a shop location license, if the barber shop meets the requirements of this chapter. Each license shall be issued for the shop and persons named in the application. Application for the transfer or assignment of a shop location license shall be upon such form as the director shall prescribe, and application shall be made within ten days of the sale or transfer. Upon the receipt of the application and a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, the director shall assign or transfer the shop location license, if the assignee or transferee and the barber shop meets the requirements of this chapter. If the application for transfer or assignment is not made within ten days, a penalty fee determined by the director



as provided in RCW 43.24.085 as now or hereafter amended will be made, prior to issuance of a license.

All licenses issued under this section shall expire on the first day of July next succeeding the date of issue. Each such license shall be renewable annually on or before the expiration date, and the application for renewal shall be accompanied by a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. Failure to obtain a renewal before delinquency shall work a forfeiture of the shop location license, but the license may be reinstated at any time after forfeiture upon the payment of the annual renewal fee, together with a penalty fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, upon satisfactory inspection. [1975 1st ex.s. c 30 § 7; 1973 1st ex.s. c 148 § 5; 1967 c 223 § 10; 1959 c 84 § 3.]

**18.15.070 Register of licenses.** The secretary of the committee shall keep a register in which shall be entered the names of all persons to whom licenses, permits or students' certificates are issued under this chapter, and said register shall be at all times open for public inspection. [1967 c 223 § 11; 1927 c 211 § 9; 1923 c 75 § 12; RRS § 8277-12.]

**18.15.080 Display of licenses.** It shall be the duty of the holder of any license to practice barbering, permit to practice barbering or student barber certificate issued under this chapter to post the same in a conspicuous place in front of his working chair, where it may be readily seen by all persons whom he may serve. [1951 c 16 § 4; 1949 c 51 § 5; 1937 c 199 § 4; 1927 c 211 § 10; 1923 c 75 § 13; Rem. Supp. 1949 § 8277-13.]

**18.15.090 Barber colleges.** Any firm, corporation or person desiring to conduct or operate a barber school or barber college in this state shall first secure from the director of motor vehicles a permit to do so, and shall keep the same prominently displayed. No barber school or college shall be issued a permit by the director of motor vehicles unless such school or college is financially responsible, and will be able in the judgment of the director to carry out and perform any contract made for the instruction of students therein.

Such school or college shall instruct students therein in the practice of barbering, including shaving and cutting of the hair and beard, and the various services incident thereto, preparation and care of tools used, sanitation as applied to barbering, knowledge concerning the common diseases of the face and skin to avoid aggravation and spreading thereof in the practice of barbering, and the use of chemicals, creams, lotions, and solutions as applied in the practice of barbering. Such barber school or college shall be managed and operated by a barber duly licensed as a manager-instructor under the provisions of this chapter, and shall at all times, while open and in operation, be in charge and under the direct supervision of a barber duly licensed as an instructor or manager-instructor under the provisions of this chapter.

Every school or college shall at all times maintain one barber duly licensed as a manager-instructor or instructor, and there shall be at least one such licensed instructor or manager-instructor for each twenty students or fraction thereof, in attendance; and there shall be at least one such instructor or manager-instructor on the floor at all times when the barber school or college is open to serve the public, which said instructor or manager-instructor shall devote his entire time to the instruction of students therein and who shall at no time operate any particular barber's chair in such school or college, or practice any barbering therein except while giving instructions to a student therein. Every such school or college shall at all times maintain on each window therein, facing upon any street, a sign in plain letters at least six inches high composed of the words "barber school" or "barber college," placed as nearly as practicable in the center between top and bottom of any such window, and, if desired by the manager-instructor of such school or college, underneath these words, a sign with letters no greater in size, composed of the words "shaving" and/or "hair cutting," giving the price charged; and such school or college shall not at any time keep or maintain upon any of the windows or doors of such school or college, or use in any advertisement, any sign or words "barber shop," "expert barbering," or other similar words, or display any barber pole or barber pole stripes such as has long been used to designate a barber shop, or barber shop services as distinguished from services performed by student barbers in such school or college. Every such school or college, at all times when open for business, shall place and maintain upon the floor within its premises in front of each entrance a standing floor sign composed of the words "student barbers perform all services herein" painted in three-inch red letters upon a white standing floor sign thirty inches high and twenty inches wide, and designed as prescribed by the director. The director shall revoke the license of any school or college which shall violate any of the provisions of this chapter, or which shall fail to impart to each student in such school or college the instructions herein required.

No barber school or college shall be operated unless it is under the control of a barber licensed as a manager-instructor. Each applicant for a manager-instructor's license shall submit an application to the director on such forms as it may prescribe. The qualifications for such a license, license fees and license renewal fees shall be the same as those prescribed for an instructor's license. The examination for a manager-instructor's license, shall in addition to the requirements for an instructor's license, include business management as related to barber shops and barber schools, state laws and regulations relating to the operation of barber schools and barbering, and such other subjects relating to the operation of barber schools or colleges as the examining committee may prescribe. The name and designation of the licensee as manager-instructor shall appear on each school or college location license issued by the director. A manager-instructor's license shall stand revoked if not used for a period of two years, after which time licentiate must be reexamined as for a new

license. [1973 1st ex.s. c 148 § 6; 1967 c 223 § 12; 1947 c 102 § 1; 1929 c 209 § 6; 1927 c 211 § 11; 1923 c 75 § 14; Rem. Supp. 1947 § 8277-14.]

*False advertising RCW 9.04.010.*

**18.15.095 Barber college location licenses—Fees, renewals, etc.** It shall be unlawful for any firm, corporation, or person to operate a barber school or college without a license for each location. Application therefor shall be made to the director. Each application for a school location license shall be accompanied by a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended.

Upon receipt of the application and fee, the director may issue a location license, if the barber school or college meets the requirements of this chapter. Each license shall be issued for the school or college and persons named in the application and may be transferable, if the transferee meets the requirements of this chapter. Whenever a registered school or barber college is discontinued the person to whom the registration is issued shall notify the director of such action and shall return to the director the certificate of registration of such school or barber college within ten days.

All licenses issued under this section shall expire on the first day of July next succeeding the date of issue. Each such license shall be renewable annually on or before the expiration date, and the application for renewal shall be accompanied by a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. Failure to obtain a renewal before delinquency shall work a forfeiture of the location license, but the license may be reinstated at any time after forfeiture upon the payment of the annual renewal fee, together with a penalty fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. [1975 1st ex.s. c 30 § 8; 1967 c 223 § 14; 1959 c 84 § 2.]

**18.15.097 Instructors—License required—Application—Qualifications—Examination—Renewal—Fees.** No person shall engage in teaching or instructing in barber schools or colleges without an instructor's license issued by the director. Each applicant for an instructor's license shall submit an application to the director on such forms as he may prescribe, and must comply with the following qualifications: (1) Each applicant must be at least twenty-five years of age; (2) must be of good health; (3) must be of good moral character; (4) must have had at least five years of experience as a licensed barber of this state in a licensed barber shop of this state immediately preceding application; (5) must have a current barber license; (6) must have at least a tenth grade education or be capable of proving an equivalent education as determined by the board for vocational education and local schools; (7) take an examination administered by the examining committee covering such subjects as are usually taught in barber schools and colleges in practical and theory work; (8) such applicant shall be required to demonstrate to the barber examining committee his professional skill and ability in performing all of the barbering

services as required by this chapter. Applications for an instructor's license must be made before becoming engaged in teaching or instructing, but applicant may be permitted to engage in teaching or instructing for a period of not more than sixty days, at which time he must present himself for examination. The fee for such license and examination shall be determined by the director as provided in RCW 43.24.085 as now or hereafter amended. Each license shall be renewed on or before July 1st; the renewal fee shall be determined by the director as provided in RCW 43.24.085 as now or hereafter amended. If application for a renewal is not received on or before July 1st, the renewal fee shall include a penalty fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. The instructor's license shall stand revoked if not used for a period of two years, and an examination as for a new license will be required before a license will be reissued.

Any person engaged as an instructor or manager-instructor on effective date of this chapter, in a barber school or college of this state, shall be issued a license under this section upon payment of the fees herein prescribed. [1975 1st ex.s. c 30 § 9; 1973 1st ex.s. c 148 § 7; 1967 c 223 § 13.]

**18.15.100 Student barbers—Student certificate—Fee—Application for barber's permit.** It shall be unlawful for any person to study the practice of barbering in any barber school or barber college authorized under this chapter unless he shall first have obtained and holds a valid student barber certificate issued pursuant to this chapter. Any person of good moral character, free from contagious or infectious disease, at least eighteen years of age, and showing completion of the tenth grade, or has an equivalent education as determined by the director whose determination shall be conclusive, shall be deemed qualified to make an application for and be entitled to obtain a student barber certificate authorizing him to study the practice of barbering in any barber school or barber college in this state. Application therefor shall be made to the director. Each application shall have attached thereto the certificate of a licensed physician and surgeon that the said applicant is not afflicted with any contagious or infectious disease, and a certificate signed by two reputable citizens living in the community in which the applicant now resides or has recently resided, that he is of good moral character. Each application shall be accompanied by two signed photographs of the applicant. Every such applicant shall pay a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, which fee shall accompany his application. The director upon the receipt of such application and fee shall issue to each qualified applicant a student barber certificate which shall be valid for one year from the date of its issue, and which shall be subject to one renewal thereafter upon the payment of a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended: *Provided*, That any student barber holding (1) a valid student barber certificate, and (2) a graduation certificate from any barber school or barber college authorized

under this chapter shall be deemed qualified to make application for a permit to practice barbering in this state. Application therefor shall be made to the director. Each applicant shall pay a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended plus an amount equal to the annual renewal fee, which fee shall accompany his application. The director upon the receipt of such application and fee shall notify the applicant of the particular date, city, and place where he is to appear for his examination for a permit to practice barbering in this state. Failure of applicant to appear for said examination will cause a forfeiture of fees. [1975 1st ex.s. c 30 § 10; 1973 1st ex.s. c 148 § 8; 1967 c 223 § 15; 1959 c 84 § 5; 1957 c 101 § 2; 1949 c 51 § 3; 1937 c 199 § 3; 1923 c 75 § 5; 1901 c 172 § 8; Rem. Supp. 1949 § 8277-5.]

**18.15.110 Student barbers—Course of instruction—Textbooks—Certificate.** It shall be unlawful for any barber school or barber college authorized under this chapter to grant admission to or instruct any person in the practice of barbering therein unless such person then holds a valid student barber certificate issued under this chapter. Every such barber school or barber college shall require as a prerequisite to graduation therefrom the completion of a course of instruction and practice therein of not less than one thousand two hundred forty-eight hours, to be completed in not less than eight consecutive months' time nor more than sixteen months' time from the date of the admission of such barber student. Such course of instruction and practice shall include, in addition to the subjects and practice hereinbefore prescribed, instruction in the following subjects: (1) Scientific fundamentals of barbering; (2) histology of the hair, skin and scalp; (3) structure of the head, face and neck; (4) coloring and bleaching the hair; (5) use of chemicals, creams, lotions and solutions as applied in the practice of barbering.

Any basic textbook, or textbooks, may be used in barber schools and colleges, however, a specific textbook (or textbooks) as recommended by the barber examining committee and designated by the director in accordance with the provisions of chapter 34.04 RCW shall be used in the preparation of examinations.

A detailed curriculum approved by the barber examining committee and adopted by the director in accordance with the provisions of chapter 34.04 RCW shall be followed by all barber schools and colleges.

Each student barber upon the satisfactory completion of the said prescribed course of instruction and practice shall be issued a graduation certificate from such barber school or barber college. Each such graduate student shall be furnished a certified copy of his graduation certificate by such barber school or barber college for his use in filing his application for a permit to practice barbering in this state as hereinbefore provided. [1973 1st ex.s. c 148 § 9; 1967 c 223 § 16; 1959 c 84 § 6; 1949 c 51 § 6; 1929 c 209 § 7; Rem. Supp. 1949 § 8277-14a.]

**18.15.120 Rules and regulations—Inspection—Penalty.** The examining committee shall have the power to adopt reasonable rules and regulations prescribing

sanitary requirements of barber shops, and barber schools and colleges, subject to approval of the director, and it shall be the duty of every person operating any barber shop or college to keep said rules and regulations conspicuously posted therein. The director of licenses or his authorized representative shall have the power to enter and make reasonable examination and inspection of any barber shop, barber school or college during the business hours for the purpose of ascertaining the sanitary condition thereof. Any barber shop, barber school or college in which tools, appliances or furnishings in use therein are not kept in a clean and sanitary condition, so as to endanger health is hereby declared to be a public nuisance and the proprietor or operator of such barber shop, barber school or college shall be guilty of a misdemeanor, and punished as in this chapter provided. [1967 c 223 § 17; 1923 c 75 § 15; RRS § 8277-15.]

**18.15.125 Inspections by examining committee—Fee.** The examining committee shall arrange with the director for the employment of one or more inspectors who shall have the same qualifications as a committee member. The secretary of the committee shall have the right to inspect any barber shop or barber school. Any member, agent, or assistant of the committee, when authorized by the committee, may enter any such shop or school during business hours for the purpose of inspection. Every new barber shop, school, or college shall be inspected before being opened for business. If no inspection is made by the committee within fifteen days after receipt by the director of an application for a location license, and all other qualifications for said licenses are met, the director may issue such license and the new shop, school, or college may open for business and remain open unless, upon inspection, the shop, school, or college fails to meet the standards set forth in this chapter or in the rules and regulations of the committee. The fee of such original inspection shall be determined by the director as provided in RCW 43.24.085 as now or hereafter amended, said fee to accompany application. [1975 1st ex.s. c 30 § 11; 1967 c 223 § 18; 1959 c 84 § 7; 1957 c 101 § 13.]

**18.15.130 Revocation of licenses—Grounds for.** The license, permit or student certificate of any barber, instructor, permittee, or student may be revoked or suspended for:

- (1) Having been found guilty of any felony, or of any crime involving moral turpitude.
- (2) Habitual drunkenness, or the use of habit forming drugs;
- (3) Having or imparting any infectious or contagious disease;
- (4) Having epilepsy, fits or other disease endangering the life, health, or safety of persons whom he may serve;
- (5) Performing his work in an unsanitary or filthy manner;
- (6) Gross incompetency;
- (7) Any violation of the provisions of this chapter; or
- (8) Any violation of any rule or regulation promulgated pursuant to this chapter.

The location license of any barber shop, school or college may be revoked or suspended for:

(1) The location being kept in an unsanitary or filthy manner, or

(2) Any violation of the provisions of this chapter; or any violation of any rule or regulation promulgated pursuant to this chapter.

The operator of any shop, or the manager-instructor of any school or college shall be responsible for the conduct and activities of all barbers, permittees, instructors, and students engaged in barbering at such location. [1967 c 223 § 19; 1957 c 101 § 4. Prior: 1923 c 75 § 16, part; RRS § 8277-16, part; prior: 1901 c 172 § 14, part.]

*Narcotic drug addicts: Chapter 69.32 RCW.*

**18.15.140 Revocation of licenses—Notice—Hearing.** A hearing board is hereby established for the purpose of hearing all charges of violations of any of the provisions of this chapter. The hearing board shall consist of three members to be appointed by the governor in the following manner: Two members, who meet the same requirements as members of the board of examiners, and one member unaffiliated with the barber profession. The first term shall be: One for six years, one for four years, and one for two years; thereafter, the terms shall be for six years and until a successor is appointed and qualified. The governor shall fill any vacancy within ninety days after it occurs by an appointment for the remainder of the unexpired term.

The hearing board shall select one of its members as its chairman and meetings shall be held as often as shall be deemed necessary to perform its duties. All members shall be present before business may be transacted.

Each member of the board shall receive as compensation for this attendance at hearings or other proper meetings twenty-five dollars for each day or part day in attendance, and shall be reimbursed for travel expenses incurred in the performance of duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

The director of licenses shall exercise direct supervision over the hearing board, and the board shall file a report to the director immediately after each session, outlining the action taken by said board.

Before any license is revoked, or suspended, or any fines levied, the licentiate must be given notice in writing of the charge or charges against him. At a day specified in said notice, at least twenty days after the service thereof, he must be afforded a fair hearing by the hearing board, and given full opportunity to produce testimony in his behalf and to confront the witnesses against him. Such charges shall be verified with the oath of the person making same, and a copy thereof shall be served in the manner provided by law for service of summons in civil actions.

The hearing shall be conducted by the hearing board at a date, time, and place as designated by the director. The hearing board shall be the sole judge of the charge or charges and the evidence produced, and the decision of any two members of the board shall be the decision of the board. If the charges are sustained in the judgment

of the board, it may direct the revocation or suspension of such license, or a fine, or both as provided by this law.

The director of licenses is hereby granted the right of subpoena to require the attendance of witnesses and the production of pertinent records; such witnesses shall be entitled to fees and mileage as provided by law.

Any person feeling himself aggrieved by the fine, revocation, or suspension under this chapter, shall have the right to appeal from the decision of the hearing board to the superior court of the county in which he maintains his place of business. [1975-'76 2nd ex.s. c 34 § 29; 1967 c 223 § 20; 1957 c 101 § 5. Prior: 1923 c 75 § 16, part; RRS § 8277-16, part; prior: 1901 c 172 § 14, part.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.15.150 Reinstatement.** Any person whose license has been so revoked may, after the expiration of ninety days, on application, and payment of fees, have the same reissued to him upon a satisfactory showing. [1967 c 223 § 21; 1957 c 101 § 6. Prior: 1923 c 75 § 16, part; RRS § 8277-16, part; prior: 1901 c 172 § 14, part.]

**18.15.160 Violations—Penalties.** Violation of the provisions of this chapter or of any rule or regulation made by the director of licenses or examining committee pursuant thereto, shall constitute a misdemeanor, and upon being found guilty thereof shall be punished by a fine of not less than ten dollars nor more than two hundred and fifty dollars, or by imprisonment in the county jail not less than ten days nor more than ninety days, or by both such fine and imprisonment. [1967 c 223 § 22; 1929 c 209 § 8; 1927 c 211 § 12; 1923 c 75 § 17; RRS § 8277-17. Prior: 1901 c 172 § 15.]

**18.15.200 Men's hairstyling—Legislative declaration.** The legislature finds that there is a distinct difference between the practice of barbering and the practice of men's hairstyling.

The legislature further finds that it is necessary to distinguish between the two practices to enable those persons currently within the profession of barbering to advance themselves professionally to become duly certified men's hairstylists and recognized as such. Therefore, it shall be the policy of the state to make laws regulating the practice of men's hairstyling. [1973 1st ex.s. c 148 § 10.]

**18.15.210 Men's hairstyling—Definition.** In addition to the practice of barbering any one or any combination of the following practices when done upon the upper part of the human male body for cosmetic purposes and not for the treatment of disease or physical or mental ailments, and when done for payment, either directly or indirectly, or without payment constitutes the practice of men's hairstyling: Straightening, curling, temporary waving, permanent waving, bleaching, or applying chemicals as related to men's hairstyling, or doing similar work thereon by the use of the hands or any method of mechanical application or appliances. [1973 1st ex.s. c 148 § 11.]

**18.15.220 Men's hairstyling—Certificate—Fee—Examination—Limitation.** Any person duly licensed as a barber in this state, and who has satisfactorily completed a course of instruction in the practice of men's hairstyling as approved by the barber examining committee, shall be entitled to make application to be examined for a Washington state men's hairstyling certificate. The fee for such examination and certificate shall be determined by the director as provided in RCW 43.24.085 as now or hereafter amended; and the application and fee shall be submitted to the director at least fifteen days prior to an examination date. Any applicant for a certificate under this chapter who secures a grade in each branch of not less than seventy-five percent in his examination and who demonstrates to the satisfaction of the examining committee that he possesses the required professional skill and ability to properly perform each of the said men's hairstyling services, shall be entitled to receive, and the director shall issue to him an official Washington state men's hairstyling certificate, recognizing him as a certified men's hairstylist, and when accompanied by a current barber license of this state, shall entitle him to practice men's hairstyling.

*Provided,* That persons engaged in the practice of men's hairstyling under this chapter are authorized to perform body waving and permanent waving to the extent necessary to style or arrange the hair on male patrons, but persons engaged in the practice of men's hairstyling under this chapter are not authorized to otherwise engage in the practice of cosmetology unless such person is licensed under chapter 18.18 RCW. [1975 1st ex.s. c 30 § 12; 1973 1st ex.s. c 148 § 12.]

**18.15.230 Men's hairstyling—Barber examining committee—Duties.** The barber examining committee shall prescribe the curriculum and examination for a men's hairstyling certificate in accordance with the provisions of chapter 34.04 RCW. [1973 1st ex.s. c 148 § 13.]

**18.15.240 Men's hairstyling—Barber examining committee—Rules and regulations.** The barber examining committee shall adopt such reasonable rules and regulations as necessary to regulate the practice of men's hairstyling under this chapter pursuant to chapter 34.04 RCW [1973 1st ex.s. c 148 § 14.]

**18.15.250 Men's hairstyling—Barber examining committee—Meetings.** The committee, with the approval of the director, shall meet at least once annually with the manager-instructors and/or instructors of each barber school or barber college in this state to discuss current trends and examinations. [1973 1st ex.s. c 148 § 15.]

**18.15.900 Severability—1923 c 75.** Should any section of this chapter, or any portion of any section, be for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. [1923 c 75 § 19.]

## Chapter 18.18 COSMETOLOGY

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**18.18.010 Definitions.** Unless the context clearly indicates otherwise, the words used in this chapter have the meaning given in this section:

(1) "Practice of hairdressing" or "hairdressing" means the arranging, dressing, curling, waving, permanent waving, cleansing, bleaching or coloring of the hair, fitting and dressing of wigs and hair pieces on or off the head other than incidental to retail sales, or doing similar work thereon by use of the hands or any method of mechanical application or appliances or the practice of haircutting;

(2) "Hairdresser" means any person, firm or corporation who engages in the practice of hairdressing;

(3) "Practice of cosmetology" or "cosmetology" means the massaging, cleansing, stimulating, manipulating, exercising or beautifying of the scalp, face, arms, bust or upper part of the body, or doing similar work thereon with the hands or with any mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptic tonics, lotions, creams, similar preparations or compounds, and manicuring the nails or removing superfluous hair or the practice of haircutting;

(4) "Cosmetologist" means any person, firm or corporation who engages in the practice of cosmetology;

(5) "Practice of manicuring" means the manicuring of nails of the hands and feet, also the administration of facials, by the use of hands and appliances;

(6) "Manicurist" means any person who engages in the practice of manicuring;

(7) A "student" is any person of the age of seventeen or over who has graduated from an accredited high school, or has an equivalent education as determined by the director whose determination shall be conclusive, who attends a duly licensed cosmetology school, and who does not receive any wage or commission: *Provided*, That \*the amendments to this subdivision shall not apply to any person attending as a student prior to \*the effective date of this amendatory section;

(8) An "operator" is a person of the age of eighteen years or over, who has been licensed to practice hairdressing and cosmetology under the direct supervision and direction of a manager operator;

(9) A "manager operator" is any person having practiced as an operator under the supervision of a manager operator for at least one year;

(10) A "shop" is any building or structure, or any part thereof, other than a school, wherein the practice of hairdressing and cosmetology is conducted;

(11) A "school" is an institution of learning devoted exclusively to the instruction and training of students in the practice of hairdressing and cosmetology;

(12) An "instructor operator" is a person who gives instruction in the practice of hairdressing and cosmetology in a school and who has the qualifications of a manager operator and who has passed an instructor examination: *Provided*, That the provisions of this subdivision shall not apply to any person acting as an instructor operator on March 16, 1951. An instructor operator shall not perform in a cosmetology school, cosmetology services for members of the public except for instructional purposes;

(13) "Director" means the director of the department of motor vehicles;

(14) "Committee" means the cosmetology examining committee;

(15) "Board" means the hearing board. [1974 ex.s. c 25 § 1. Prior: 1973 1st ex.s. c 154 § 21; 1973 1st ex.s. c 148 § 16; 1965 ex.s. c 3 § 1; 1959 c 324 § 1; 1955 c 313 § 1; 1951 c 180 § 1; 1937 c 215 § 2; 1927 c 281 § 2; RRS § 8278-2.]

\*Reviser's note: "the amendments to this subdivision" and "the effective date of this amendatory section" referred to in subsection (7) refers to 1959 c 324 § 1 which became effective at midnight June 10, 1959, see preface to 1959 session laws.

Severability.—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Effective date.—1965 ex.s. c 3: "The effective date of this 1965 amendatory act is July 1, 1965." [1965 ex.s. c 3 § 18.]

**18.18.020 Director—Duties.** The director of motor vehicles shall, in addition to other duties imposed by law, adopt rules for carrying out the provisions of this chapter and conducting examinations of applicants for licenses; for governing the recognition of, and the credits to be given to, the study of hairdressing and cosmetology

under a hairdresser and cosmetologist or any school of hairdressing and cosmetology licensed under the laws of another state, territory or the District of Columbia, and shall, subject to the approval of the state board of health, promulgate rules for the prevention of infectious or contagious diseases in hairdressing and cosmetology shops and schools, and shall furnish to each person, firm or corporation licensed under this chapter a copy of such rules; shall hold examinations of all applicants for a license under this chapter, and grant licenses to those qualified. The director of motor vehicles shall keep all examination papers on file for at least one year, which file shall be open to the inspection of the applicant or his agent. [1973 1st ex.s. c 148 § 17; 1937 c 215 § 8; RRS § 8278-8.]

**18.18.030 Licensing—Required.** It shall be unlawful for any person, firm or corporation to engage in the practice of hairdressing and cosmetology, or the practice of manicuring, for compensation, or hold himself or itself out as qualified to engage in the practice of, or solicit the practice of, hairdressing and cosmetology, or the practice of manicuring, or to own, manage, conduct, or give instruction in a hairdressing and cosmetology shop or school unless licensed to do so as in this chapter provided.

Every hairdressing and cosmetology establishment for the teaching of any branch thereof shall be classified as a school of hairdressing and cosmetology within the meaning of this chapter, and shall be required to comply with its provisions. [1973 1st ex.s. c 148 § 18; 1965 ex.s. c 3 § 2; 1937 c 215 § 1; RRS § 8278-1. Prior: 1927 c 281 § 1.]

**18.18.040 Licensing—Exemptions.** Nothing in this chapter shall prohibit any person authorized under the laws of this state to practice medicine, surgery, or dentistry from engaging in the practice for which they are licensed; nor require a license under this chapter for any barber from performing any service for which he may be licensed; nor prohibit manicuring in barber shops when performed by a manicurist licensed under the provisions of this chapter; but the provisions hereof shall not be construed to authorize any person other than a student or person licensed under this chapter to do permanent, or temporary waving of the hair.

This chapter shall not apply to persons engaged in the care or treatment of patients in health facilities or engaged in the care of residents of boarding homes and similar residential care facilities. [1973 1st ex.s. c 148 § 19; 1937 c 215 § 18; RRS § 8278-18. Prior: 1927 c 281 § 16.]

**18.18.050 Operator's license.** An operator's license shall be issued to a student who: (1) is of the age of eighteen years or over; (2) is of good moral character and temperate habits; (3) has graduated from an accredited high school or the equivalent thereof as determined by the director whose determination shall be conclusive: *Provided*, That this subdivision shall not apply to those holding a valid operator's license or attending a recognized cosmetology school prior to the



\*effective date of this amendatory section but such persons shall be subject to the law in existence prior to the effective date of this amendatory section; (4) is a citizen of the United States or declared his intention to become a citizen; (5) has completed a course of training of not less than two thousand hours in a recognized cosmetology school, such training not to exceed eight hours in any one day; and (6) who has satisfactorily passed the hairdressing and cosmetology examination in this state. [1973 1st ex.s. c 148 § 21; 1959 c 324 § 3; 1957 c 52 § 3; 1951 c 180 § 2. Prior: 1937 c 215 § 3(a); RRS § 8278-3(a).]

**Reviser's note:** \*(1) The "effective date of this amendatory section", see note following RCW 18.18.010;

(2) The law in existence prior to the effective date of this amendatory section reads: "**18.18.050 Operator's license—Qualifications.** An operator's license shall be issued to a student who: (1) Is of the age of eighteen years or over; (2) is of good moral character and temperate habits; (3) has completed two years of high school or the equivalent thereof; (4) is a citizen of the United States or declared his intention to become a citizen; (5) has completed a course of training of not less than two thousand hours in a recognized beauty school, such training not to exceed eight hours in any one day; and (6) who has satisfactorily passed the hairdressing and beauty culture examination in this state. [1957 c 52 § 3; 1951 c 180 § 2. Prior: 1937 c 215 § 3(a); RRS § 8278-3(a).]"

**18.18.065 Shop or school location license—Application—Issuance.** It shall be unlawful for any person, firm, or corporation to operate a cosmetology shop or a cosmetology school without a shop or school location license for each cosmetology shop or cosmetology school. Application therefor shall be made on forms furnished by the director and shall contain such information as the director may reasonably require. Upon receipt of such application and the fee required by this chapter, the director shall issue a location license if such shop or school meets the other requirements of this chapter. [1973 1st ex.s. c 148 § 22; 1965 ex.s. c 3 § 3; 1959 c 324 § 2.]

**18.18.070 School license—Qualifications.** No person shall be licensed to conduct a school unless it appears to the director: (1) That the school will maintain the course of instruction herein provided; (2) that instruction in the school at all times is in charge of and under the supervision of a manager operator; (3) that the school will at all times maintain one instructor for each fifteen students or fraction thereof; and (4) that at no time does a school have less than two instructors on duty. [1965 ex.s. c 3 § 4; 1957 c 52 § 5; 1951 c 180 § 4. Prior: 1937 c 215 § 3(e); RRS § 8278-3(e).]

**18.18.080 Applications—Forms—Requirements—Renewals.** Applications for licenses to be issued pursuant to the terms of this chapter shall be made on forms furnished by the director and shall state therein the name, age, place of residence, nationality of the applicant, his experience or training, or the time in attendance at any school, if the applicant is a graduate of any school; and such other information as the board may prescribe; said application shall be accompanied by proof of school attendance (except with an application for an owner or school license), a certificate of health

signed by a reputable physician to the effect that after a physical examination made within ten days prior to the filing thereof, he has found such applicant free from any infectious or contagious disease; and by the application fees provided for herein. An application for a new school license in addition to the foregoing applicable provisions, shall state the location of the school to be licensed and the names and addresses of the instructors who will initially instruct in said school, and shall also supply a copy of the complete curriculum and how it shall be taught.

After the examination committee has examined the application and inspected the proposed location for the school, and has verified the instructors and approved the curriculum, it will authorize the applicant to proceed with the installation of the school plant, should the project be qualified.

Final approval will be granted on compliance with all regulations, and with the sanitary rules and regulations approved by the state board of health together with the following minimum requirements:

(1) Separate rooms for class work, locker arrangements, and clinical services, (2) separate lavatories for women and men.

Any person initially issued a license after June 30, 1965 pursuant to the terms of the act may, upon the expiration thereof, have the same renewed upon compliance with the conditions, and payment of the fees, required for the renewal of licenses issued hereunder. [1965 ex.s. c 3 § 5; 1937 c 215 § 9; RRS § 8278-9. Prior: 1927 c 281 § 6.]

**18.18.090 Applications—Fees.** Each application for student enrollment, manicurist, operator, instructor operator, manager operator, shop, or school shall be accompanied by a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. Any applicant who fails to pass the examination may take the next succeeding examination with payment of an additional fee determined by the director as provided in RCW 43.24.085. [1975 1st ex.s. c 30 § 13; 1973 1st ex.s. c 148 § 23; 1965 ex.s. c 3 § 6; 1959 c 324 § 4; 1955 c 313 § 3; 1951 c 180 § 5. Prior: (i) 1937 c 215 § 10(a); RRS § 8278-10(a). (ii) 1937 c 215 § 12(h); RRS § 8276-12(h).]

**18.18.100 Examining committee—To conduct examinations—Qualifications.** All examinations for license shall be conducted and given by the examining committee under the supervision and direction of the director of motor vehicles, in the manner provided by law. No person shall, however, be appointed as a member of an examining committee for the purpose of conducting examinations and performing other duties imposed by this chapter unless he is an operator and of the age of at least twenty-five years, has the qualifications of an instructor, has been a citizen of the state for at least three years immediately prior to his appointment, has been engaged in actual practice as a hairdresser, cosmetologist, or instructor for at least five years, is not connected directly or indirectly with any

school of hairdressing and cosmetology, and is not connected directly or indirectly in the business of the manufacturing, renting or selling of hairdressing or cosmetology appliances and supplies at wholesale. [1973 1st ex.s. c 148 § 24; 1965 ex.s. c 3 § 7; 1937 c 215 § 7; RRS § 8278-7. Prior: 1927 c 281 § 11.]

**18.18.102 Examining committee—Appointment—Terms.** The examining committee described in RCW 18.18.100 shall consist of five members appointed by the governor. The governor shall designate one of the committee members as committee secretary. The secretary shall be chairman of the committee. As of June 11, 1953, members of the examining committee shall be appointed for terms of office as follows: One for five years, one for four years, one for three years, one for two years, and one for one year. Thereafter the terms of the members shall be for five years and until their successors are appointed and qualified. The examining committee shall be under the direct supervision of the director. The governor may remove a member of the committee for cause. The governor shall fill any vacancy on the committee within ninety days after it occurs by an appointment for the remainder of the unexpired term. [1953 c 168 § 1.]

**Severability—1953 c 168:** "If any section, subsection, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions." [1953 c 168 § 6.] This applies to RCW 18.18.102 through 18.18.108 and 18.18.280.

**18.18.104 Examining committee—Meetings—Principal office—Duties, compensation of secretary—Compensation of members—Source of support.** The secretary of the examining committee shall keep a record of all the proceedings of the committee. The committee shall meet in order to hold examinations and to conduct any other proper business. The committee shall set a schedule for such meetings a year in advance. The principal office of the committee shall be and is hereby established in Olympia, Washington. A majority of the committee in meeting duly assembled may exercise all the powers devolving upon the committee. For any urgent purpose a special meeting may be called. Notice from the secretary signed by three members of the committee may convene the committee for a special meeting. Only business specified in the notice shall be transacted. The secretary shall arrange for and conduct all examinations called for under the provisions of this chapter. The secretary shall deliver all records and findings of the examining committee as a result of examinations and hearings to the director. The secretary shall have a full time position with a salary to conform with standards set by the department of licenses for similar positions. The secretary shall be reimbursed for travel expenses incurred in the actual performance of his duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Each member of the committee shall receive as compensation for attendance at proper meetings of the committee thirty-five dollars for each day's attendance and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter

amended: *Provided, however,* That all salaries, compensation, and travel expenses shall come from the license and application fees collected pursuant to this chapter. [1975-'76 2nd ex.s. c 34 § 30; 1965 ex.s. c 3 § 8; 1953 c 168 § 2.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.18.106 Examining committee—General powers.** The examining committee shall do all things necessary to carry out the provisions of this chapter and it may promulgate necessary rules and regulations compatible with the provisions of this chapter. [1953 c 168 § 3.]

**18.18.108 Examining committee—Appointment of inspectors—Inspections.** The examining committee shall arrange with the director for the employment of two or more inspectors. The inspectors shall have the same qualifications as examining committee members. The secretary of the committee shall have the right to inspect any job or school. Any member, agent, or assistant of the committee, when authorized by the committee, may enter any shop or school during business hours for the purpose of inspection. Every shop shall be inspected at least twice a year. Every school shall be inspected at least three times a year by the secretary. [1953 c 168 § 4.]

**18.18.110 Examinations—Subjects—Conduct.** All examinations for licenses shall be conducted six times a year, an examination to be given once every two months.

The examination shall consist of written and oral questions and answers and practical tests. Written examinations shall cover each of the branches of hairdressing and cosmetology required in the course of study.

Practical tests shall consist of actual demonstrations in hairdressing and cosmetology under the direction and supervision of the committee.

Applicants shall also be required to pass an examination in anatomy, physiology, hygiene, sanitation, sterilization and the use of antiseptics in hairdressing and cosmetology.

Passing grades shall be based upon the standard of one hundred percent.

An applicant who receives a passing grade of not less than seventy-five percent in each branch, and in addition thereto passes the required examination in anatomy, physiology, hygiene, sanitation, sterilization and the use of antiseptics, shall be entitled to a license as an operator.

An instructor's examination shall consist of a lesson plan and a demonstration in the art of teaching at least two subjects of the cosmetology law. [1973 1st ex.s. c 148 § 25; 1965 ex.s. c 3 § 9; 1955 c 313 § 4. Prior: 1937 c 215 § 12; RRS § 8278-12.]

**18.18.120 Exemption from examination—Licensed by another state or country—Fee.** Any person who has been licensed by proper authority of any state or territory or possession of the United States or any country



may be issued a license without examination, provided the applicant's qualifications are substantially equal to the requirements of this chapter. Each application for a license under this section shall be accompanied by a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. [1975 1st ex.s. c 30 § 14; 1965 ex.s. c 3 § 10; 1951 c 180 § 6; 1937 c 215 § 14. Prior: 1927 c 281 § 13.]

**18.18.130 Licenses—Issuance—Duration.** The director shall issue to each applicant, who has complied with the provisions of this chapter, the license applied for. All licenses shall remain in effect until the first day of July following their issuance, unless sooner revoked or suspended. [1955 c 313 § 5. Prior: (i) 1937 c 215 § 10(b); RRS § 8278-10(b). (ii) 1937 c 215 § 13; RRS § 8278-13.]

**18.18.140 Licenses—Renewal—Fees.** Operator, manicurist, instructor operator, manager operator, shop, or school licenses may be renewed from year to year upon the payment on or before the first day of each July following their issuance, of a renewal fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended.

A certificate of health is required with an application for an original license, one must also be filed with a renewal application.

Any manicurist, operator, manager operator, or instructor operator whose license has lapsed may have the same renewed upon payment of all fees which the applicant would have been required to pay to keep such license in effect, and an additional fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended for each lapsed year: *Provided*, That any person whose license has lapsed for more than three years shall be reexamined, as in the case of any applicant for an original license. [1975 1st ex.s. c 30 § 15; 1973 1st ex.s. c 148 § 27; 1971 ex.s. c 266 § 3; 1965 ex.s. c 3 § 11; 1959 c 324 § 5; 1955 c 313 § 6; 1951 c 180 § 7. Prior: (i) 1937 c 215 § 10(b); RRS § 8278-10(b). (ii) 1937 c 215 § 11; RRS § 8278-11.]

**18.18.150 Licenses—Display.** Every person licensed under this chapter shall display his license in plain view in the place where he engages in the practice for which the license was issued. [1957 c 52 § 6. Prior: 1937 c 215 § 17(c); RRS § 8278-17(c).]

**18.18.160 Licenses—Change of location—Notice to director—Penalty.** Every manager and operator licensed under this chapter, within thirty days after changing his place of residence or business as recorded upon the records of the director, shall notify the director in writing of his new place of residence or business.

Whenever a shop licensed under this chapter shall be discontinued, such license shall thereupon be of no further force and effect and shall be invalid. The person to whom the shop license is issued shall notify the director of such action and return to the director the license of such shop within thirty days of such discontinuance. Any

person seeking to operate or reopen such shop after such discontinuance under the invalid license, or who fails to make the notification herein required shall be guilty of a misdemeanor and each day on which such violation occurs shall constitute a separate offense. [1959 c 324 § 6; 1957 c 52 § 7. Prior: 1937 c 215 § 17(g); RRS § 8278-17(g).]

**18.18.170 Licenses—Shop license restrictions—Responsibility of shop licensee—No school and shop in same location.** Every shop license authorizing a person to conduct such shop shall be issued only in the name of the shop and the name of the person named in the application for the shop license, to which may be added the trade name, under which the shop is conducted. Such license shall state that it is not transferable.

The person named in the shop license shall be primarily responsible for the business ethics and the proper conduct of the shop.

No school and shop shall be maintained in the same location; nor shall there be any connecting entrance. [1959 c 324 § 7; 1957 c 52 § 8. Prior: (i) 1937 c 215 § 3(i); RRS § 8278-3(i). (ii) 1937 c 215 § 5; RRS § 8278-5.]

**18.18.180 Licenses—Additional—Shops and schools.** A license issued to any person to conduct a shop or school shall authorize such person to conduct only one shop or school, but any person holding a license to conduct a shop or school may apply for and receive additional licenses which shall authorize such person to conduct an additional shop or school for each such license. [1937 c 215 § 6; RRS § 8278-6. Prior: 1927 c 281 § 5.]

**18.18.190 Schools—Courses of instruction.** The courses of instruction in theory and practical application in every school shall comprise at least the following:

- (1) Shampooing, soap and dry;
- (2) Care of the face and massaging, including make up and care of eyebrows and lashes;
- (3) Care of the scalp and massaging, rinses and packs;
- (4) Hair coloring and bleaching;
- (5) Cold permanent waving;
- (6) Iron curling or waving;
- (7) Finger waving;
- (8) Hair fashioning, shaping and cutting;
- (9) Manicuring;
- (10) Electricity as applied to cosmetology, and the use and application of electrical appliances;
- (11) The study of the law on cosmetology of the state of Washington;
- (12) Shop management, ownership, and business ethics.
- (13) Theory and science of cosmetology. [1973 1st ex.s. c 148 § 26; 1965 ex.s. c 3 § 12; 1957 c 52 § 9; 1951 c 180 § 8. Prior: 1937 c 215 § 3(f); RRS § 8278-3(f).]

**18.18.200 Schools—Enrollment—Registration with director.** Every school licensed hereunder shall, within twenty days after the enrollment of any student therein, register such student with the director on such

forms as the director may prescribe. Such registration shall be accompanied by a health certificate signed by a reputable physician to the effect that after a physical examination made within ten days prior to the filing thereof, he has found such registrant free from any infectious or contagious disease. [1937 c 215 § 4; RRS § 8278-4.]

**18.18.210 Schools—Regulations governing.** Every school shall cause the word "school" to appear conspicuously on its literature and advertising matter, and to be painted in letters at least four inches high on all doors leading to the school, which are open to the public generally.

Every school shall have available for every twenty-five students, subject to other requirements by the director, at least: Three shampoo bowls; seven hair dryers; two facial chairs; one sterilizer; one heating cap; and cold permanent wave equipment.

No charge shall be made for student work until the student has completed four hundred hours of instruction and practice: *Provided*, That no student shall perform such services for charge unless he displays such identification issued by the schools which certifies the completion of four hundred hours of instruction and practice. [1965 ex.s. c 3 § 13; 1957 c 52 § 10; 1951 c 180 § 9. Prior: (i) 1937 c 215 § 3(g), (h); RRS § 8278-3(g), (h). (ii) 1937 c 215 § 17(b); RRS § 8278-17(b).]

**18.18.220 Revocation of licenses—Grounds.** Any license issued pursuant to this chapter may be revoked for any of the following causes arising after the issuance thereof:

(1) Conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction shall be conclusive evidence;

(2) Habitual drunkenness or the use of habit forming drugs;

(3) Gross incompetency;

(4) Advertising in any manner by means of knowingly false or deceptive statements;

(5) Performing work authorized by said license in an unsanitary or filthy manner;

(6) Performing either the practice of hairdressing and cosmetology or the practice of manicuring upon the person of another while knowingly suffering from an infectious or contagious disease;

(7) Wilful violation of any of the provisions of this chapter;

(8) Failure to pay an operator the minimum wage required by law. [1973 1st ex.s. c 148 § 28; 1959 c 324 § 8; 1937 c 215 § 15; RRS § 8278-15. Prior: 1927 c 281 § 14.]

*False advertising: RCW 9.04.010.*

*Narcotic drug addicts: Chapter 69.32 RCW.*

*Persons infected with contagious disease: RCW 70.20.040.*

**18.18.230 Revocation, etc., of licenses—Notice and procedure—Appeal.** (1) Before any license shall be revoked or the penalties herein provided be imposed, the holder thereof shall have a written notice of the charge or charges brought against him, and a hearing

had thereon not less than twenty days after the service of such notice. Such charges, which shall be filed with the director who shall refer them to the board, shall be verified with the oath of the person making the same, and a copy thereof shall be served upon the holder of the license with a notice, which notice shall be served in the manner provided by law for service of summons in civil actions. The director of licenses is hereby granted the right of subpoena to require the attendance of witnesses and the production of pertinent records, such witnesses shall be entitled to fees and mileage as provided by chapter 2.40 RCW. Such hearing shall be public and the holder of such license shall be given an opportunity to produce evidence in his behalf and to confront the witnesses produced against him. The hearings shall be conducted by the hearing board, in the county or an adjacent county, where the accused conducts his business. The board shall be the sole judge of the charges and the evidence produced, and the decision of any two members of the board shall be the decision of the board. If the charges are sustained in the judgment of the board, the board may direct the revocation of such license, or that such holder may be barred from exercising any rights or privileges under said license for any term not exceeding one year;

(2) Any person feeling himself aggrieved by the refusal of the director to issue any license provided for in this chapter, or renew the same, or by the revocation or suspension of any license issued under the provisions of this chapter, shall have the right to appeal from the decision of the board to the superior court of the county in which he maintains his place of business. [1965 ex.s. c 3 § 15; 1937 c 215 § 16; RRS § 8278-16. Prior: 1927 c 281 § 14. Formerly RCW 18.18.230 through 18.18.250.]

**18.18.251 Hearing board.** A hearing board is hereby established and shall consist of three members to be appointed by the governor in the following manner: One member qualified by at least six years' experience in the cosmetology industry for a six year term; one member from licensed Washington state cosmetology schools for a four year term; and one member who is unaffiliated with any of the foregoing associations for a two year term. Thereafter the terms of the members shall be for six years and until their successors are appointed and qualified. The governor shall fill any vacancy on the board within ninety days after it occurs by an appointment for the remainder of the unexpired term.

The board shall select one of its members as its chairman. Meetings shall be held as often as shall be necessary for the board to perform its duties. All members shall be present before business may be transacted. The director of licenses shall exercise direct supervision over the board's activities and the board shall file quarterly reports with the director outlining its activities for the preceding period.

Each member of the board shall receive as compensation for his attendance at hearings or other proper meetings thirty-five dollars for each day or part of a day's attendance and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended: *Provided, however,*

That all compensation and travel expenses shall come from the license and application fees collected pursuant to this chapter. [1975-76 2nd ex.s. c 34 § 31; 1965 ex.s. c 3 § 14.]

**Effective date—Severability—1975-76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.18.260 Unlawful practices and omissions.** No person shall engage in the practice of hairdressing, and cosmetology in any place other than a hairdressing and cosmetology shop or school, except in case of his own family or in case of a person whose physical condition prevents his presence at a shop or school.

No person shall sleep in, or use for residential purposes, any room used wholly or in part as a hairdressing and cosmetology shop, nor engage in hairdressing and cosmetology in any room used for sleeping or residential purposes.

Every hairdressing and cosmetology shop shall maintain an outside entrance separate from the entrances to rooms used for sleeping or residential purposes.

From and after July 1, 1959 every hairdressing and cosmetology shop shall provide and maintain for the use of the customers adequate toilet facilities.

No hairdressing or cosmetology shop shall be operated unless it is under the direct supervision of a manager operator.

No person other than a manicurist limited to the practice of manicuring or an operator in demonstrating, or instructing in the use of any cosmetics or supplies of any kind, shall engage in any of the acts enumerated in RCW 18.18.010 and 18.18.190.

No student shall engage in the practice of hairdressing and cosmetology except in a school under the direct supervision of an instructor. [1973 1st ex.s. c 148 § 29; 1965 ex.s. c 3 § 17; 1959 c 324 § 9; 1957 c 52 § 11. Prior: 1937 c 215 § 17 (a), (d), (e), (f); RRS § 8278-17 (a), (d), (e), (f).]

**18.18.270 Violations—Penalties.** Every person shall be guilty of a misdemeanor who: (1) Violates any of the provisions of this chapter or any regulation lawfully promulgated by the director; or, (2) permits any person in his employ or under his supervision or control to practice hairdressing and cosmetology without a license where one is required by this chapter; or, (3) attempts to obtain a license by fraudulent means. Each and every day on which such violation occurs shall constitute a separate offense. [1973 1st ex.s. c 148 § 30; 1957 c 52 § 12. Prior: 1937 c 215 § 17(i); RRS § 8278-17(i).]

**18.18.290 Post-graduate training program for instructors.** A training program is hereby adopted for all licensed instructors, or instructors subsequently licensed, consisting of not less than thirty clock-hours of post-graduate study to be taken within a three year period of the subjects hereinafter enumerated. No instructor license shall be renewed as provided in RCW 18.18.140 without a certificate of attendance from a state accredited institution recognized by the state board of education. The study shall include the following subjects:

- (1) Analysis
- (2) Basic lesson planning
- (3) Advance lesson planning
- (4) Psychology
- (5) Instructional aids
- (6) Test planning.

Completion of this additional training within the current year or preceding two years is a prerequisite to the issuance of a renewal license by the director. Evidence of completion of this training program shall first be required of instructors seeking renewal of their licenses in 1968. [1965 ex.s. c 3 § 16.]

**18.18.300 Manicuring—License required—Exception—Application—Examinations.** Within ninety days after July 16, 1973 the examining committee, under the supervision and direction of the director of motor vehicles, shall devise the qualifications necessary for and an examination for the practice of manicuring, for which a separate license shall hereafter be required under this chapter, except for persons holding a valid license in the practice of beauty culture: *Provided*, That any person engaged in the practice of manicuring for at least one year prior to July 16, 1973 shall be deemed qualified for such a license without an examination therefor. Applications for licenses shall be made on such form and require such information and certificates, as required by the examining committee and be accompanied by the proper application fee. Examinations shall be held at regular intervals throughout the year as the examining committee deems necessary. The provisions of RCW 18.18.110 shall not be applicable hereto. [1973 1st ex.s. c 148 § 20.]

**18.18.900 Construction—1937 c 215.** Words used in this chapter importing the singular number may also be applied to the plural of persons and things, and words importing the plural may be likewise applied to the singular. Words importing the masculine may be applied to the feminine and words importing the feminine to the masculine. Words applying to natural persons shall apply also to firms, organizations, partnerships, associations and corporations; and words applying to such organizations shall apply to natural persons wherever the name may be necessary to effect the purpose of this chapter. This chapter shall be liberally construed to effect the intents and purposes hereof. [1937 c 215 § 19.]

**18.18.910 Severability—1937 c 215.** If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this act as a whole, or of any section, provision or part thereof not adjudged invalid or unconstitutional. [1937 c 215 § 20.]

## Chapter 18.20 BOARDING HOMES

Sections	Purpose.
18.20.010	Purpose.
18.20.020	Definitions.
18.20.030	License required.

18.20.040	Application for license.
18.20.050	Licenses—Issuance—Renewal—Provisional licenses—Fees—Display.
18.20.060	Denial, suspension, revocation of license.
18.20.070	Appeal from decision of department—Procedure.
18.20.090	Rules, regulations, and standards.
18.20.100	Enforcement by local authorities—Authorization.
18.20.110	Inspection of boarding homes—Approval of changes or new facilities.
18.20.120	Information confidential.
18.20.130	Fire protection—Duties of state fire marshal.
18.20.140	Operating without license—Penalty.
18.20.150	Operating without license—Injunction.
18.20.160	Persons requiring medical or nursing care.
18.20.170	Application of chapter to homes operated by religious organizations.
18.20.900	Severability—1957 c 253.

**18.20.010 Purpose.** The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the maintenance and operation of boarding homes, which, in the light of advancing knowledge, will promote safe and adequate care of the individuals therein. [1957 c 253 § 1.]

**18.20.020 Definitions.** As used in this chapter:

(1) "Aged person" means a person of the age sixty-five years or more, or a person of less than sixty-five years who by reason of infirmity requires domiciliary care.

(2) "Boarding home" means any home or other institution, however named, which is advertised, announced or maintained for the express or implied purpose of providing board and domiciliary care to three or more aged persons not related by blood or marriage to the operator. It shall not include any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof.

(3) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(4) "Director" means the state director of health.

(5) "Board" means the state board of health.

(6) "Department" means the state department of health.

(7) "Authorized department" means any city, county, city-county health department or health district authorized by the director of the state department of health to carry out the provisions of this chapter. [1957 c 253 § 2.]

**Reviser's note:** Powers, duties, and functions of the department of health transferred to the department of social and health services, RCW 43.20A.030.

**18.20.030 License required.** After January 1, 1958, no person shall operate or maintain a boarding home as defined in this chapter within this state without a license under this chapter. [1957 c 253 § 3.]

**18.20.040 Application for license.** An application for a license shall be made to the department or authorized department upon forms provided by either of said departments and shall contain such information as the department reasonably requires, which shall include

affirmative evidence of ability to comply with such rules and regulations as are lawfully promulgated by the board. [1957 c 253 § 4.]

**18.20.050 Licenses—Issuance—Renewal—Provisional licenses—Fees—Display.** Upon receipt of an application for license, if the applicant and the boarding home facilities meet the requirements established under this chapter, the department or the department and the authorized health department jointly, shall issue a license. If there is a failure to comply with the provisions of this chapter or the standards, rules and regulations promulgated pursuant thereto, the department, or the department and authorized health department, may in its discretion issue to an applicant for a license, or for the renewal of a license, a provisional license which will permit the operation of the boarding home for a period to be determined by the department, or the department and authorized health department, but not to exceed twelve months, which provisional license shall not be subject to renewal. At the time of the issuance or renewal of a license or provisional license the licensee shall pay a license fee of ten dollars plus one dollar per bed capacity per year, but in no event shall the total exceed fifty dollars. When the license or provisional license is issued jointly by the department and authorized health department, the license fee shall be paid to the authorized health department. All licenses issued under the provisions of this chapter shall expire on a date to be set by the board, but no license issued pursuant to this chapter shall exceed twelve months in duration: *Provided*, That when the annual license renewal date of a previously licensed boarding home is set by the board on a date less than twelve months prior to the expiration date of a license in effect at the time of reissuance, the license fee shall be prorated on a monthly basis and a credit be allowed at the first renewal of a license for any period of one month or more covered by the previous license. All applications for renewal of license shall be made not later than thirty days prior to the date of expiration of the license. Each license shall be issued only for the premises and persons named in the application, and no license shall be transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises. [1971 ex.s. c 247 § 1; 1957 c 253 § 5.]

**18.20.060 Denial, suspension, revocation of license.** The department or the department and authorized department jointly, as the case may be, after notice and opportunity for hearing to the applicant or license holder, is authorized to deny, suspend or revoke a license in any case in which it finds there has been a failure or refusal to comply with the requirements established under this chapter or the regulations promulgated pursuant thereto.

Notice of denial, suspension, or revocation shall be given by registered mail, or by personal service in the *manner of service of summons in a civil action*; which notice shall set forth the particular reasons for the proposed denial, suspension or revocation and shall fix a date not less than twenty days from the date of mailing

or service, during which the applicant or licensee may in writing request a hearing on the denial, suspension, or revocation. If the applicant or licensee fails to request a hearing within that time, the department or the department and authorized department jointly may deny, suspend or revoke the license without further notice or action. The order of denial, suspension or revocation shall be mailed to the applicant or license holder by registered mail or personally served on him in the manner of service of summons in a civil action.

If the applicant or licensee requests a hearing within such time the department shall fix a time for the hearing and shall give the applicant or licensee or such person's attorney, written notice thereof.

The procedure governing hearings shall be in accordance with rules promulgated by the board and such hearing shall be informal and summary, except that a record shall be kept of the testimony taken on behalf of the applicant or licensee and the department, which need not be transcribed unless an appeal is taken therefrom. The department shall render its decision within a reasonable time after the hearing and issue its order, which shall be served on the applicant or licensee or such person's attorney, and the order shall become final unless an appeal is taken therefrom. [1957 c 253 § 6.]

**18.20.070 Appeal from decision of department—**  
**Procedure.** Within twenty days after the date of mailing of the decision of the department, the interested applicant or licensee may appeal to the superior court of the county in which the boarding home is located or is to be located, and such appeal shall be heard de novo as a case in equity, but upon such appeal only such issues of law may be raised as were properly included in the hearing before the department. Full opportunity to be heard upon the issues of law and fact shall be had before judgment is pronounced. Such appeal shall be perfected by serving a notice of appeal with the department and by filing the notice of appeal, together with proof of service thereof, with the clerk of the court. The service and the filing together with proof of service of the notice of appeal all within twenty days shall be jurisdictional. The department shall within twenty days after receipt of such notice of appeal serve and file a notice of appearance upon appellant or his attorney of record, and such appeal shall thereupon be deemed at issue. The department shall serve upon the appellant and file with the clerk of the court before hearing a certified copy of the complete record of the administrative proceedings which shall, upon being so filed, become the record in such case. The cost of transcribing the record shall be borne by the appellant where the order of the department is affirmed by the court. In the event of modification or reversal, such cost shall be borne as directed by the court. [1957 c 253 § 7.]

**18.20.090 Rules, regulations, and standards.** The board shall adopt, amend, and promulgate such rules, regulations, and standards with respect to all boarding homes and operators thereof to be licensed hereunder as may be designed to further the accomplishment of the purposes of this chapter in promoting safe and adequate

care of individuals in boarding homes and the sanitary, hygienic and safe conditions of the boarding home in the interest of public health, safety, and welfare. [1971 ex.s. c 189 § 3; 1957 c 253 § 9.]

**18.20.100 Enforcement by local authorities—**  
**Authorization.** Where it is determined by the director together with the jurisdictional health officer, that a city, county, city-county health department or health district is qualified to carry out the provisions of this chapter, he shall authorize such political subdivision or agency to administer and enforce this chapter, and the rules and regulations promulgated hereunder.

Any such authorization may be withdrawn by the director after thirty days' notice in writing to the authorized department should the director determine that the authorized department is unwilling or unable to carry out the duties and responsibilities hereunder. [1957 c 253 § 10.]

**18.20.110 Inspection of boarding homes—**  
**Approval of changes or new facilities.** The department or authorized health department shall make or cause to be made at least a yearly inspection and investigation of all boarding homes. Every inspection may include an inspection of every part of the premises and an examination of all records (other than financial records), methods of administration, the general and special dietary and the stores and methods of supply. Following such inspection or inspections, written notice of any violation of this law or the rules and regulations promulgated hereunder, shall be given the applicant or licensee and the department. The board may prescribe by regulations that any licensee or applicant desiring to make specified types of alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, submit plans and specifications therefor to the department or to the authorized department for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized. [1957 c 253 § 11.]

**18.20.120 Information confidential.** All information received by the department or authorized health department through filed reports, inspections, or as otherwise authorized under this chapter, shall not be disclosed publicly in any manner as to identify individuals or boarding homes, except in a proceeding involving the question of licensure. [1957 c 253 § 12.]

**18.20.130 Fire protection—**  
**Duties of state fire marshal.** Standards for fire protection and the enforcement thereof, with respect to all boarding homes to be licensed hereunder, shall be the responsibility of the state fire marshal, who shall adopt such recognized standards as may be applicable to boarding homes for the protection of life against the cause and spread of fire and fire hazards. The department upon receipt of an application for a license, shall submit to the state fire marshal in writing, a request for an inspection, giving the applicant's name and the location of the premises to

be licensed. Upon receipt of such a request, the state fire marshal or his deputy, shall make an inspection of the boarding home to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as promulgated by the state fire marshal, he shall promptly make a written report to the boarding home and the department or authorized department as to the manner and time allowed in which the premises must qualify for a license and set forth the conditions to be remedied with respect to fire regulations. The department, authorized department, applicant or licensee shall notify the state fire marshal upon completion of any requirements made by him, and the state fire marshal, or his deputy, shall make a reinspection of such premises. Whenever the boarding home to be licensed meets with the approval of the state fire marshal, he shall submit to the department or authorized department, a written report approving same with respect to fire protection before a full license can be issued. The state fire marshal shall make or cause to be made inspections of such homes at least annually.

In cities which have in force a comprehensive building code, the provisions of which are determined by the state fire marshal to be equal to the minimum standards of the state fire marshal's code for boarding homes, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the state fire marshal or his deputy and they shall jointly approve the premises before a full license can be issued. [1957 c 253 § 13.]

**18.20.140 Operating without license—Penalty.** Any person operating or maintaining any boarding home without a license under this chapter shall be guilty of a misdemeanor and each day of a continuing violation shall be considered a separate offense. [1957 c 253 § 14.]

**18.20.150 Operating without license—Injunction.** Notwithstanding the existence or use of any other remedy, the department, may, in the manner provided by law, upon the advice of the attorney general who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the operation or maintenance of a boarding home without a license under this chapter. [1957 c 253 § 15.]

**18.20.160 Persons requiring medical or nursing care.** No person operating a boarding home licensed under this chapter shall admit to or retain in the boarding home any aged person requiring nursing or medical care of a type provided by institutions licensed under chapters 18.51, 70.41 or 71.12 RCW, except that when registered nurses are available from a visiting nurse service or home health agency or from an adjacent or nearby skilled nursing facility or one located in the facility, and upon a doctor's order that a supervised medication service is needed, it may be provided. Such medication service shall be provided only to ambulatory boarders who otherwise meet all requirements for residency in a

boarding home. [1975 1st ex.s. c 43 § 1; 1957 c 253 § 16.]

**18.20.170 Application of chapter to homes operated by religious organizations.** Nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents in any boarding home conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination. [1957 c 253 § 17.]

**18.20.900 Severability—1957 c 253.** If any part, or parts, of this chapter shall be held unconstitutional, the remaining provisions shall be given full force and effect, as completely as if the part held unconstitutional had not been included herein, if any such remaining part can then be administered for the purpose of establishing and maintaining standards for boarding homes. [1957 c 253 § 20.]

## Chapter 18.22 PODIATRY

### Sections

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18.22.930	Persons licensed under prior law.

**Reviser's note:** (1) "Director" and "director of licenses" have been substituted for "board", "secretary of the board", and "board of examiners" throughout this chapter, since the state board of chiropody was abolished by 1921 c 7 § 135 and its powers and duties were transferred to the director of licenses by 1921 c 7 § 96 (RCW 43.24.020).

(2) "This act" and similar phrases have been changed throughout chapter 18.22 RCW to read "this chapter", on the basis that chapter 18.22 RCW consists entirely of 1917 c 38, as amended.

**Reviser's note:** The department of licenses has been abolished and its powers and duties have devolved to the department of motor vehicles. See note following Title 18 RCW digest.

*Actions for negligence against, evidence and proof required to prevail:* RCW 4.24.290.

*Examining committee in basic sciences:* Chapter 43.74 RCW.

*Rebating by practitioners of healing professions prohibited:* Chapter 19.68 RCW.



**18.22.010 Definitions.** The practice of podiatry means the diagnosis and the medical, surgical, mechanical, manipulative, and electrical treatments of ailments of the human foot. A podiatrist is a podiatric physician and surgeon of the foot licensed to treat ailments of the foot, except for;

- (1) Amputation of the foot; and
- (2) The administration of a spinal anesthetic or any anesthetic, which renders the patient unconscious, or the administration and prescription of drugs including narcotics, other than required to perform the services authorized for the treatment of the feet; and
- (3) Treatment of systemic conditions. [1973 c 77 § 1; 1955 c 149 § 1; 1941 c 31 § 1; 1921 c 120 § 1; 1917 c 38 § 1; Rem. Supp. 1941 § 10074.]

**Persons licensed under prior laws:**

**1917 c 38 § 3:** "Licenses for the practice of chiropody shall be issued by the state board of chiropody without examination to all persons who shall within sixty days from the taking effect of this act have and maintain a fixed place of business with the necessary facilities for the sterilization of instruments, and who shall at the time of making application file with said board an affidavit to the effect that he or she has such fixed place of business, and is a resident of the state, and been engaged in the practice of chiropody in this state for at least two years prior to making application; said application to be accompanied by the certificate of two licensed physicians resident at the place of business of the applicant, to the effect that they are acquainted with the applicant and believe him or her to be a person of good moral character. Said applicant shall at the time of making application pay to the said board the sum of ten dollars."

**1935 c 48 § 2:** "Licenses for the practice of chiropody shall be issued by the director of licenses without examination, to all persons who shall within ten days from the taking effect of this act have and maintain a fixed place of business with the necessary facilities for the sterilization of instruments, and who shall at the time of making application file with the said director an affidavit to the effect that he or she had such fixed place of business, and is a resident of the state and had been engaged in the practice of chiropody in this state for at least three years prior to 1917. The application for said license shall be accompanied by an affidavit of reputable persons to the effect that they are acquainted with the applicant and believe him or her to be a person of good moral character. In addition thereto, the applicant shall give satisfactory reasons to the director of licenses why he failed to register since chapter 38 of the Session Laws of 1917 went into effect. Said applicant shall at the time of making application pay to the said director of licenses the sum of twenty-five dollars: *Provided, however,* That nothing herein contained shall be construed to in anywise modify, repeal or alter the provisions of section 3 of chapter 38 of the Laws of 1917, except as herein contained."

**18.22.020 Licensing required.** It shall be unlawful for any person to practice podiatry in this state unless he first has obtained a license therefor. [1973 c 77 § 2; 1957 c 52 § 13. Prior: 1917 c 38 § 2, part; RRS § 10075, part.]

*Basic sciences certificate required: Chapter 43.74 RCW.*

**18.22.030 Licensing—Exemptions.** Nothing in this chapter contained shall be construed as preventing any licensed physician, surgeon, osteopath, chiropractor, or other person licensed to treat the sick and afflicted, from treating the hands or feet by the methods and means permitted by his license, nor to prevent the domestic administration of family remedies, nor shall this chapter be construed to discriminate against any particular school of medicine or surgery or osteopathy and surgery, or any chiropractic school, or any licensed system or mode of treating the sick or afflicted, or to interfere in

any way with the practice of religion: *Provided,* That nothing herein shall be held to apply to or to regulate any kind of treatment by prayer. [1973 c 77 § 3; 1917 c 38 § 18; RRS § 10091.]

*Exemptions: RCW 18.22.230.*

**18.22.040 Applicants—Eligibility.** Before any person shall be permitted to take an examination for the issuance of a podiatry license, he shall furnish the director of motor vehicles with satisfactory proof that:

- (1) He is eighteen years of age or over;
- (2) He is of good moral character; and
- (3) He has received a diploma or certificate of graduation from a legally incorporated, regularly established and recognized school of podiatry having as a minimum requirement not less than four thousand two hundred sixteen scholastic hours given over a period of four years with personal attendance.

"Recognized" means official recognition by the Council of Education of the American Podiatry Association: *Provided,* That each applicant, prior to the beginning of his course in podiatry or registration or matriculation in a recognized school of podiatry, must have as a minimum requirement, a four years' course in a high school or its equivalent and the successful completion of a two years' residence course of work of college grade leading toward the degree of bachelor of science. [1973 c 77 § 4; 1971 ex.s. c 292 § 19; 1955 c 149 § 2; 1935 c 48 § 3; 1921 c 120 § 3; 1917 c 38 § 6; RRS § 10079.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**18.22.050 Applicants—Educational qualifications.** Applicants for a certificate to practice podiatry shall file satisfactory evidence of having pursued in any recognized legally chartered school of podiatry, a course of instruction covering a total of at least four thousand two hundred sixteen scholastic hours, including those subjects that appear on the examinations administered by the national board of podiatry examiners. [1973 c 77 § 5; 1955 c 149 § 4. Prior: 1935 c 48 § 1, part; 1921 c 120 § 2, part; 1917 c 38 § 4, part; RRS § 10077, part.]

*Basic sciences certificate required: Chapter 43.74 RCW.*

**18.22.060 Application fee—Reexamination.** Every applicant for a license to practice podiatry shall pay to the state treasurer a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended.

An applicant who fails to pass an examination satisfactorily after the expiration of six months from the date of the examination at which he failed, is entitled to a reexamination at a meeting called for the examination of applicants, upon the payment of a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended for each reexamination. [1975 1st ex.s. c 30 § 16; 1973 c 77 § 6; 1965 c 97 § 1; 1957 c 52 § 14. Prior: (i) 1921 c 120 § 5; 1917 c 38 § 9; RRS § 10082. (ii) 1921 c 120 § 4; 1917 c 38 § 7; RRS § 10080.]

**18.22.070 Examination.** Examinations shall be conducted by an examining committee and shall be written and clinical.

The minimum requirement for licensing of applicants under this chapter shall be based upon a general average of seventy-five percent of all the subjects involved, taken collectively, and not less than seventy percent in any one subject. [1973 c 77 § 7; 1955 c 149 § 5. Prior: (i) 1935 c 48 § 1, part; 1917 c 38 § 4, part; RRS § 10077, part. (ii) 1917 c 38 § 8; RRS § 10081.]

*Basic science examinations: Chapter 43.74 RCW.*

**18.22.081 License—Reciprocity with other states.** Any applicant who has been examined and licensed under the laws of another state, which through a reciprocity provision in its laws, similarly accredits the holders of certificates from the proper authorities of this state to the full privileges of practice within its borders or an applicant who has satisfactorily passed examinations given by the national board of podiatry examiners, may, in the discretion of the examining committee be granted a license without examination on the payment of a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended to the state treasurer: *Provided*, That he has not previously failed to pass an examination held in this state. If the applicant was licensed in another state, he must file with the director a copy of his license certified by the proper authorities of the issuing state to be a full and true copy thereof, and must show that the standards, eligibility requirements, and examinations of that state are at least equal in all respects to those of this state. [1975 1st ex.s. c 30 § 17; 1973 c 77 § 8; 1965 c 97 § 3.]

**18.22.110 License—Display.** Every holder of a podiatry license shall keep his license on exhibition in a conspicuous place in his office or place of business. [1973 c 77 § 9; 1957 c 52 § 15. Prior: 1917 c 38 § 2, part; RRS § 10075, part.]

**18.22.120 License—Annual renewal—Fee.** Every person practicing podiatry must renew his license each year and pay a renewal fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended.

Any podiatry license that has been allowed to lapse may be renewed by presentation of a new character certificate as required for examination, together with the payment of the annual license fee. [1975 1st ex.s. c 30 § 18; 1973 c 77 § 10; 1971 ex.s. c 266 § 4; 1965 c 97 § 2; 1955 c 149 § 6. Prior: (i) 1921 c 120 § 5, part; 1917 c 38 § 9, part; RRS § 10082, part. (ii) 1921 c 120 § 9; RRS § 10096.]

**18.22.130 Record of licensees.** The director shall keep in a book kept for that purpose, a record showing the name, age, place of residence, the time spent in the study and practice of podiatry, the time spent in schools of podiatry, and the date of graduation therefrom and the degree if any, and the date and number of the license issued to such applicant, and whether the same was issued upon or without examination; and the copy of

such record certified by the director shall be prima facie evidence of the facts therein stated in all courts and all actions and proceedings where proof of such facts is competent. [1973 c 77 § 11; 1917 c 38 § 5; RRS § 10078.]

**18.22.140 Unprofessional conduct—Penalty.** It shall be unlawful for any person holding a license to practice podiatry to:

(1) Practice podiatry under any name, except his own, which shall be that used in his license issued by the director; or

(2) Conduct an office for the practice of podiatry in his name or use his name in connection with any office for the practice of podiatry, unless he is personally present therein operating as a podiatrist or personally overseeing the operations performed in any office during most of the time that that office is being operated; or

(3) Employ a solicitor or solicitors to obtain business; or

(4) Prepare, cause to be prepared, use, or participate in the use of, any form of public communication that contains professionally self-laudatory statements calculated to attract patients; as used herein, "public communications" includes, but is not limited to, communications by means of television, radio, motion picture, newspaper, magazine, or book; or

(5) Hold out to treat successfully or cure all ailments of the foot or leg or any which are manifestly incurable; or

(6) Advertise in newspapers, periodicals, or in bold face type or in any printed matter or by the use of any form of display sign or by means of hand bills, posters, circulars, stereopticon slide, motion pictures, radio, television or any printed publication or medium: *Provided, however*, That he may be listed in any directory in a manner uniform as to type, size and color with others listed therein, may display a dignified sign at the entrance to his office or on the windows thereof, containing his name, degree, the designation podiatrist and/or podiatric medicine and surgery and/or podiatric medicine and/or treatment of the foot, and, if he is practicing podiatry through a professional corporation, an appropriate indication of the fact (on his office door and business card, as well), and may use dignified business cards containing his name, title, degree, office and residence address and telephone numbers and his office hours; or

(7) Obtain any fee by fraud or misrepresentation; or

(8) Wilfully betray professional secrets; or

(9) Directly or indirectly employ any person unlicensed as a podiatrist to perform operations of any kind, except dressing following an operation; or

(10) Adopt any means tending to deceive the public or to be habitually intemperate or grossly immoral, or to commit any offense involving moral turpitude, in which case the record of conviction thereof shall be conclusive evidence; or

(11) Obtain by fraud or deceit a license to practice podiatry; or

(12) Use or prescribe for use narcotics in any other way than for therapeutic purposes; or



(13) Offer, undertake or agree to cure any disease or pathological condition of the foot by a secret method, procedure, treatment, or medicine, or to treat, operate, or prescribe for any such condition by a method, means or procedure which the license holder refuses to divulge upon demand of the director of licenses; or

(14) Be guilty of unprofessional conduct as defined in any other act relating to the practice of podiatry.

Any violation of the provisions of this section shall constitute improper, unprofessional and dishonorable conduct; it shall also constitute grounds for injunction proceedings to prevent a continuance of the same, and in addition shall constitute a gross misdemeanor. [1973 c 77 § 12; 1955 c 149 § 8. Prior: 1917 c 38 § 13, part; RRS § 10086, part.]

*False advertising: RCW 9.04.010.*

*Narcotics: Chapter 69.32 RCW.*

*Obtaining license by fraud: Chapter 9A.60 RCW.*

**18.22.150 Revocation or suspension of license—**  
**Grounds for.** Upon proof that the holder of a podiatry license:

(1) Has been convicted of the violation of any of the provisions of this chapter or of any crime involving moral turpitude; or

(2) Procured his license by fraud or deceit either in the presentation of any false statement as to his qualifications or in his examination; or

(3) Is guilty of unprofessional conduct or inefficiency in the practice of his profession; the director may revoke his license or suspend it for a period not to exceed six months. [1973 c 77 § 13; 1955 c 149 § 9. Prior: (i) 1917 c 38 § 13, part; RRS § 10086, part. (ii) 1921 c 120 § 8; RRS § 10095.]

*Practicing without basic sciences certificate grounds for revocation, penalty: RCW 43.74.065.*

**18.22.160 Refusal, revocation or suspension of license—Procedure.** If the director refuses to grant a podiatry license or revokes or suspends one, he shall file in the records of his office a concise statement of the grounds and reasons for his refusal, revocation or suspension. This statement, together with his decision in writing, shall remain a permanent record. [1973 c 77 § 14; 1957 c 52 § 17. Prior: 1917 c 38 § 14, part; RRS § 10087, part.]

**18.22.170 Refusal, revocation or suspension of license—Appeal from director's order.** Any person feeling himself aggrieved by the order of the state board of chiropody in refusing to grant him a license or in revoking his license shall have the right to appeal to the superior court of the county where the meeting of the board was held at which the order refusing to grant a license, or revoking a license was entered. [1917 c 38 § 15; RRS § 10088.]

**Reviser's note:** The state board of chiropody was abolished by 1921 c 7 § 137 and its powers and duties were transferred to the director of licenses by 1921 c 7 § 96 (RCW 43.24.020), which powers and duties subsequently have devolved to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest.

Appeals from decisions of director of licenses lie in the superior court of Thurston county, see RCW 43.24.120.

**18.22.185 Prescriptions.** Podiatrists may issue prescriptions valid at any pharmacy for any drug necessary in the practice of podiatry. [1973 c 77 § 15; 1955 c 149 § 11.]

**18.22.191 Rules and regulations.** The director of licenses shall have the power and duty to formulate and prescribe such rules and regulations as may be reasonable in the proper administration of this chapter. [1955 c 149 § 13.]

**18.22.200 Unlawful practices.** It shall be unlawful for any persons licensed to practice podiatry under the provisions of this chapter to use, advertise or display the title "doctor" or its synonyms independent of the title "podiatrist" or its synonyms, and it shall be unlawful for any person to exhibit as his own any license that has not been issued to him. [1973 c 77 § 16; 1917 c 38 § 16; RRS § 10089.]

**18.22.210 Unlawful practice—Evidence of.** It shall be deemed prima facie evidence of the practice of podiatry or as holding himself out as a practitioner of podiatry within the meaning of this chapter for any person to treat in any manner the human foot by medical, surgical or mechanical means or appliances, or to use the title "podiatrist" or any other words or letters which designate or tend to designate to the public that the person so treating or holding himself out to treat, is a podiatrist: *Provided, however,* That nothing herein contained shall prohibit a duly licensed physician or surgeon from treating the human foot by medical, surgical or mechanical means or appliances. [1973 c 77 § 17; 1935 c 48 § 4; 1921 c 120 § 6; 1917 c 38 § 10; RRS § 10083.]

**18.22.215 Injunctions.** If any person engages in the practice of podiatry without possessing a valid license so to do, or if he violates the provisions of RCW 18.22.140, the attorney general, any prosecuting attorney, the director, or any citizen of the same county may maintain an action in the name of the state to enjoin such person from engaging in the practice of podiatry. The injunction shall not relieve from criminal prosecution, but the remedy by injunction shall be in addition to the liability of such offender to criminal prosecution and to suspension or revocation of his license. [1973 c 77 § 18; 1955 c 149 § 14.]

*Injunctions: Chapter 7.40 RCW.*

**18.22.220 Violations—Penalty.** Every person violating, or failing to comply with, the provisions of this chapter shall be guilty of a gross misdemeanor. [1955 c 149 § 10; 1917 c 38 § 21; RRS § 10094.]

**18.22.230 Exemptions.** The following practices, acts and operations are excepted from the operation of the provisions of this chapter:

(1) The practice of podiatry in the discharge of official duties by podiatrists in the United States armed forces,

public health service, Veterans Bureau or Bureau of Indian Affairs;

(2) Recognized schools of podiatry or colleges of podiatry, and the practice of podiatry by students in such recognized schools or colleges, when acting under the direction and supervision of registered and licensed podiatrists acting as instructors;

(3) The practice of podiatry by licensed podiatrists of other states or countries while appearing as clinicians at meetings of the Washington state podiatry association or component parts thereof, or at meetings sanctioned by them;

(4) The use of roentgen and other rays for making radiograms or similar records of the feet or portions thereof, under the supervision of a licensed podiatrist or physician.

(5) The practice of podiatry by externs, interns, and residents in training programs approved by the American Podiatry Association. [1973 c 77 § 19; 1955 c 149 § 12.]

*Licensing—Exemptions: RCW 18.22.030.*

**18.22.900 Severability—1917 c 38.** If any provision of this act shall be held void or unconstitutional, all other provisions and all other sections of the act which are not expressly held to be void or unconstitutional shall continue in full force and effect. [1917 c 38 § 19.]

**18.22.910 Severability—1955 c 149.** If any provision of this act or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of this act which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are declared to be severable. [1955 c 149 § 16.]

**18.22.930 Persons licensed under prior law.** Nothing contained in \*this 1973 amendatory act shall be construed to require any person who has held a valid chiropody license of this state prior to June 7, 1973 to meet any further eligibility or examination requirements for a podiatry license. [1973 c 77 § 28.]

*\*Reviser's note:* "this 1973 amendatory act" refers to RCW 18.22-.010-18.22.160, 18.22.185, 18.22.200-18.22.215, 18.22.230, 18.57A-.060, 18.71A.060, 43.74.010, 43.74.037, 43.74.040, 43.74.080, 43.74.085, 70.98.170, as those sections were amended by 1973 c 77.

## Chapter 18.25 CHIROPRACTIC

### Sections

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*Chiropractic disciplinary board: Chapter 18.26 RCW.*

*Examining committee in basic sciences: Chapter 43.74 RCW.*

*Lien of doctors: Chapter 60.44 RCW.*

*Rebating by practitioners of healing professions prohibited: Chapter 19.68 RCW.*

**18.25.005 "Chiropractic" defined.** For the purpose of chapters 18.25 and 18.26 RCW, the term "chiropractic" shall mean and include that practice of health care which deals with the detection of subluxations, which shall be defined as any alteration of the biomechanical and physiological dynamics of contiguous spinal structures which can cause neuronal disturbances, the chiropractic procedure preparatory to, and complementary to the correction thereof, by adjustment or manipulation of the articulations of the vertebral column and its immediate articulations for the restoration and maintenance of health; it includes the normal regimen and rehabilitation of the patient, physical examination to determine the necessity for chiropractic care, the use of x-ray and other analytical instruments generally used in the practice of chiropractic: *Provided*, That no chiropractor shall prescribe or dispense any medicine or drug nor practice obstetrics or surgery nor use x-rays for therapeutic purposes: *Provided, however*, That the term "chiropractic" as defined in \*this act shall not prohibit a practitioner licensed under chapter 18.71 RCW from performing accepted medical procedures, except such procedures shall not include the adjustment by hand of any articulation of the spine: *And provided further*, That nothing herein shall be construed to prohibit the rendering of dietary advice. [1974 ex.s. c 97 § 7.]

*\*Reviser's note:* "this act", [1974 ex.s. c 97] see note following RCW 18.25.120.

**Severability—1974 ex.s. c 97:** See note following RCW 18.25.120.

**18.25.010 Practice without license unlawful.** It shall be unlawful for any person to practice chiropractic in this state, unless they shall have obtained a license as provided in this chapter: *Provided, however*, That nothing in this chapter shall apply to or affect any persons who are now actually engaged in the practice of such profession, except as hereinafter provided. [1919 c 5 § 4; RRS § 10099.]

**Persons practicing prior to act:** "All chiropractors practicing within this state six months prior to the passage of this act and who shall be a graduate of a chartered school or college of chiropractic requiring actual attendance in the same, during his course, shall be granted a license as herein provided, without examination, provided that application be made within sixty days after the taking effect of this act and accompanied by the required fee, as herein provided." [1919 c 5 § 7.]

*Basic sciences certificate required: Chapter 43.74 RCW.*

**18.25.015 Board created—Composition—**  
**Terms.** There is hereby created a state board of chiropractic examiners consisting of three practicing chiropractors to conduct examinations and perform duties as provided in this chapter.

Members of the board shall be appointed by the governor from a list of five or more names submitted by the Washington Chiropractors Association, Inc. and/or the Chiropractic Society of Washington. At the time of their appointment, and during their tenure of office, the members of the board must be actual residents of Washington, licensed to practice chiropractic in this state, and must be citizens of the United States.

In order that the term of one member shall expire each year, first members appointed shall serve one for a term of three years, one for a term of two years, and one for a term of one year; thereafter appointments shall be for a term of three years. Vacancies shall be filled by the governor as in the case of original appointment, such appointee to hold office for the remainder of the unexpired term. [1965 ex.s. c 50 § 1; 1959 c 53 § 1.]

**18.25.017 Board—Organization, meetings, rules, compensation—Immunity from suit.** The board shall meet as soon as practicable after appointment, and shall elect a chairman and a secretary from its members. Meetings shall be held at least once a year at such place as the director of licenses shall determine, and at such other times and places as he deems necessary.

The board may make such rules and regulations, not inconsistent with this chapter, as it deems necessary to carry out the provisions of this chapter.

Each member shall receive thirty-five dollars a day for each day actually engaged in conducting examinations or in the preparation of examination questions or the grading of examination papers, together with travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, all to be paid out of the general fund on vouchers approved by the director, but not to exceed in the aggregate the amount of fees collected as provided in this chapter.

Members of the board shall be immune from suit in any action, civil or criminal, based upon their duties or other official acts performed in good faith as members of such board. [1975-'76 2nd ex.s. c 34 § 32; 1974 ex.s. c 97 § 8; 1959 c 53 § 2.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**Severability—1974 ex.s. c 97:** See note following RCW 18.25.120.

**18.25.020 Applications—Qualifications—Fees.**  
(1) Any person not now licensed to practice chiropractic in this state and who desires to practice chiropractic in

this state, before it shall be lawful for him to do so, shall make application therefor to the director, upon such form and in such manner as may be adopted and directed by the director. Each applicant who matriculates after January 1, 1975, shall have completed not less than one-half of the requirements for a baccalaureate degree at an accredited and approved college or university and shall be a graduate of a chiropractic school or college accredited and approved by the board of chiropractic examiners and shall show satisfactory evidence of completion by each applicant of a resident course of study of not less than four thousand classroom hours of instruction in such school or college. Applications shall be in writing and shall be signed by the applicant in his own handwriting and shall be sworn to before some officer authorized to administer oaths, and shall recite the history of the applicant as to his educational advantages, his experience in matters pertaining to a knowledge of the care of the sick, how long he has studied chiropractic, under what teachers, what collateral branches, if any, he has studied, the length of time he has engaged in clinical practice; accompanying the same by reference therein, with any proof thereof in the shape of diplomas, certificates, and shall accompany said application with satisfactory evidence of good character and reputation.

(2) There shall be paid to the director by each applicant for a license, a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended which shall accompany application and a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, which shall be paid upon issuance of license. Like fees shall be paid for any subsequent examination and application. [1975 1st ex.s. c 30 § 19; 1974 ex.s. c 97 § 9; 1959 c 53 § 3; 1919 c 5 § 5; RRS § 10100.]

**Severability—1974 ex.s. c 97:** See note following RCW 18.25.120.

**18.25.030 Examinations—Subjects—Grades.** Examinations for license to practice chiropractic shall be made by the board of chiropractic examiners according to the method deemed by it to be the most practicable and expeditious to test the applicant's qualifications. Such application shall be designated by a number instead of his or her name, so that the identity shall not be discovered or disclosed to the members of the examining committee until after the examination papers are graded.

All examinations shall be in whole or in part in writing, the subject of which shall be as follows: Anatomy, physiology, hygiene, symptomatology, neurology, spinal pathology, x-ray, principles of chiropractic and adjusting, as taught by chiropractic schools and colleges. A license shall be granted to all applicants who shall correctly answer seventy-five percent of all questions asked, and if any applicant shall fail to answer correctly seventy percent of the questions on any branch of said examination, he or she shall not be entitled to a license. [1974 ex.s. c 97 § 10; 1959 c 53 § 4; 1919 c 5 § 6; RRS § 10101.]

**Severability—1974 ex.s. c 97:** See note following RCW 18.25.120.

**18.25.035 Waiver of examination.** The board may, in its discretion, waive any examination required by this chapter of persons applying for a license to practice chiropractic if, in its opinion, the applicant has successfully passed an examination conducted by the national board of chiropractic examiners of the United States that is of equal or greater difficulty than the examination being waived by the board. [1971 ex.s. c 227 § 5.]

**18.25.040 Reciprocal licenses.** Persons licensed to practice chiropractic under the laws of any other state having equal requirements of this chapter, may, in the discretion of the board of chiropractic examiners, and after examination by the board in principles of chiropractic, x-ray, and adjusting, as taught by chiropractic schools and colleges, be issued a license to practice in this state without further examination, upon payment of a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. [1975 1st ex.s. c 30 § 20; 1971 ex.s. c 227 § 6; 1919 c 5 § 14; RRS § 10108.]

**18.25.050 Revocation or refusal of licenses—Hearing—Restoration.** (1) The director may refuse to grant or may revoke a license to practice chiropractic in this state or may cause a licentiate's name to be removed from the records in the office of the county clerk of any county in this state upon any of the following grounds, to wit: The employment of fraud or deception in applying for a license or in passing an examination provided for in this chapter; the practice of chiropractic under a false or assumed name, or the impersonation of another practitioner of like or different name; the conviction of a crime involving moral turpitude; habitual intemperance in the use of ardent spirits, controlled substances, or stimulants to such an extent as to incapacitate him or her for the performance of his or her professional duties; exploiting or advertising through the press, or by the use of handbills, circulars, or other periodicals, other than professional cards, giving only name, address, profession, office hours, and telephone connections. Any person who is a licentiate, or who is an applicant for a license to practice chiropractic against whom any of the foregoing grounds for revoking or refusing a license, is presented to said director with a view of having the director revoke or refuse to grant a license, shall be furnished with a copy of the complaint, and shall have a hearing before said director in person or by attorney, and witnesses may be examined by said director respecting the guilt or innocence of said accused.

(2) Said director may at any time within two years of the refusal or revocation or cancellation of registration under this section, issue a new license or grant a license to the person affected, restoring him to, or conferring upon him all the rights and privileges of, and pertaining to the practice of chiropractic as defined and regulated by this chapter. Any person to whom such have been restored shall pay to the director a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended upon issuance of a new license. [1975 1st ex.s. c 30 § 21; 1919 c 5 § 8; RRS § 10103.]

**18.25.060 Recording of license—Cancellation for failure.** (1) Every person who shall receive a license from the director of licenses shall have it recorded in the office of the county clerk of the county of which he resides and shall likewise have it recorded in the counties to which he shall subsequently remove for the purpose of practicing chiropractic.

(2) The failure or refusal on the part of the holder of a license to have it recorded before he or she shall begin the practice of chiropractic in this state after having been notified by the director to do so, shall be sufficient grounds to revoke or cancel a license and render it null and void. The county clerk shall keep for public inspection, in a book provided for that purpose, a complete list and description of the licenses recorded by him. When any such licenses shall be presented to him for record, he shall stamp upon the face thereof his signed memorandum of the date when such license was presented for record. [1919 c 5 § 9; RRS § 10104.]

**18.25.070 Annual renewal of license—Attendance at approved symposiums required—Fees—Forfeiture—Penalties—Reexamination.** Every person practicing chiropractic shall, as a prerequisite to annual renewal of license, submit to the director at the time of application therefor, satisfactory proof showing attendance during the preceding year, at one or more chiropractic symposiums which are recognized and approved by the board of chiropractic examiners: *Provided*, That the board may, for good cause shown, waive said attendance.

(1) Symposiums approved, by the board, for licensees practicing or residing within the state of Washington are those sponsored or conducted by the Washington Chiropractor's Association, the Chiropractic Society of Washington, the American Chiropractic Association, or The International Chiropractic Association, or an approved chiropractic college and which devote themselves to lectures or demonstrations concerning matters which are recognized in the state of Washington chiropractic licensing laws.

(2) Symposiums approved, by the board, for licensees practicing and residing outside the state are those sponsored or conducted by an approved chiropractic college or a recognized chiropractic organization which is representative of the chiropractors of a state, a territory, a province, or a country.

(3) To be eligible for approval, a symposium shall:

(a) Be sponsored by an approved chiropractic college or a recognized chiropractic organization which is representative of the chiropractors of a state, a territory, a province, or a country; and

(b) Extend over a period of at least two days, and offer an education program consisting of at least eight hours; and

(c) Include instruction by at least two outstanding chiropractic educators.

Every person practicing chiropractic within this state shall pay on or before the first day of September of each year, after a license is issued to him as herein provided, to said director a renewal license fee to be determined by the director as provided in RCW 43.24.085 as now or

hereafter amended. The director shall, thirty days or more before September first, of each year mail to all chiropractors in the state a notice of the fact that the renewal fee will be due on or before the first of September. Nothing in this chapter shall be construed so as to require that the receipts shall be recorded as original licenses are required to be recorded.

The failure of any licensed chiropractor to pay his annual license renewal fee by the first day of October following the date on which the fee was due shall work a forfeiture of his license. It shall not be reinstated except upon written application and the payment of a penalty to be determined by the director as provided in RCW 43.24.085 as now or hereafter amended, together with all annual license renewal fees delinquent at the time of the forfeiture, and those for each year thereafter up to the time of reinstatement. Should the licentiate allow his license to elapse for more than three years, he must be reexamined as for a new license. [1975 1st ex.s. c 30 § 22; 1974 ex.s. c 97 § 11; 1971 ex.s. c 266 § 5; 1959 c 53 § 5; 1919 c 5 § 10; RRS § 10105.]

**Severability**—1974 ex.s. c 97: See note following RCW 18.25.120.

**18.25.080 Health regulations.** Chiropractic practitioners shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases, sign death certificates and any and all matters pertaining to public health, reporting to the proper health officers the same as other practitioners. [1919 c 5 § 12; RRS § 10107.]

**18.25.090 Prohibited practices—Penalty—Exceptions.** Any person who shall practice or attempt to practice chiropractic, or any person who shall buy, sell or fraudulently obtain any diploma or license to practice chiropractic, whether recorded or not, or who shall use the title chiropractor, D.C.Ph.C., or any word or title to induce belief that he is engaged in the practice of chiropractic without first complying with the provisions of this chapter, or any person who shall violate any of the provisions of this chapter, shall be guilty of a misdemeanor, and every person filing for record, or attempting to file for record, the certificate issued to another, falsely claiming himself to be the person named in said certificate, or falsely claiming himself to be the person entitled to the same, shall be guilty of a felony. All subsequent offenses shall be punished in like manner. Nothing herein shall be held to apply to or to regulate any kind of treatment by prayer: *Provided*, That on all cards, books, papers, signs or other written or printed means of giving information to the public, used by those licensed by this chapter to practice chiropractic, the practitioner shall use after or below his name the term chiropractor or D.C.Ph.C. designating his line of drugless practice, and shall not use the letters M.D. or D.O.: *Provided*, That the word doctor or "Dr." may be used only in conjunction with the word "chiropractic" or "chiropractor" [1971 ex.s. c 227 § 7; 1919 c 5 § 15; RRS § 10109.]

**18.25.100 Prosecutions for violations.** It shall be the duty of the several prosecuting attorneys of this state to prosecute all persons charged with the violation of any of

the provisions of this chapter. It shall be the duty of the director of licenses to aid said attorneys of this state in the enforcement of this chapter. [1919 c 5 § 16; RRS § 10110.]

**18.25.110 "Unprofessional conduct".** See RCW 18.26.030.

**18.25.120 Discrimination—Legislative finding and declaration.** The legislature finds and declares that the costs of health care to the people are rising disproportionately to other costs and that there is a paramount concern that the right of the people to obtain access to health care in all its facets is being impaired thereby. For this reason, the reliance on the mechanism of health care service contractors, whether profit or nonprofit, is the only effective manner in which the large majority of the people can attain access to quality health care, and it is therefore declared to be in the public interest that health care service contractors be regulated to assure that all the people have access to health care to the greatest extent possible. \*This 1974 amendatory act, prohibiting discrimination against the legally recognized and licensed profession of chiropractic, is necessary in the interest of the public health, welfare, and safety. [1974 ex.s. c 97 § 1.]

**\*Reviser's note:** "This 1974 amendatory act" [1974 ex.s. c 97] consists of RCW 18.25.005, 18.25.120–18.25.170, 18.26.035 and amendments to RCW 18.25.017, 18.25.020, 18.25.030, 18.25.070, 18.26.030, 18.26.040, and 18.26.070.

**Severability**—1974 ex.s. c 97: "If any provision of this 1974 amendatory act, or its application to any person or circumstance, is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 97 § 16.]

**18.25.130 Discrimination—Acceptance of services of chiropractors by state and political subdivisions required.** Notwithstanding any other provision of law, the state and its political subdivisions shall accept the services of licensed chiropractors for any service covered by their licenses with relation to any person receiving benefits, salaries, wages, or any other type of compensation from the state, its agencies or subdivisions. [1974 ex.s. c 97 § 2.]

**Severability**—1974 ex.s. c 97: See note following RCW 18.25.120.

**18.25.140 Discrimination—State and political subdivisions prohibited from discriminating against chiropractors in performing and receiving compensation.** The state and its political subdivisions, and all officials, agents, employees, or representatives thereof, are prohibited from in any way discriminating against licensed chiropractors in performing and receiving compensation for services covered by their licenses. [1974 ex.s. c 97 § 3.]

**Severability**—1974 ex.s. c 97: See note following RCW 18.25.120.

**18.25.150 Discrimination—State and political subdivisions—Entering into agreements or contracts which discriminate prohibited.** Notwithstanding any other provision of law, the state and its political subdivisions, and all officials, agents, employees, or representatives

thereof, are prohibited from entering into any agreement or contract with any individual, group, association, or corporation which in any way, directly or indirectly, discriminates against licensed chiropractors in performing and receiving compensation for services covered by their licenses. [1974 ex.s. c 97 § 4.]

**Severability**—1974 ex.s. c 97: See note following RCW 18.25.120.

**18.25.160 Discrimination—Immaterial whether costs deemed additional compensation.** Notwithstanding any other provision of law, for the purpose of RCW 18.25.120 through 18.25.150 and 18.25.170 it is immaterial whether the cost of any policy, plan, agreement, or contract be deemed additional compensation for services, or otherwise. [1974 ex.s. c 97 § 5.]

**Severability**—1974 ex.s. c 97: See note following RCW 18.25.120.

**18.25.170 Discrimination—Application of RCW 18.25.120 through 18.25.160.** RCW 18.25.120 through 18.25.160 shall apply to all agreements, renewals, or contracts issued on or after July 24, 1974. [1974 ex.s. c 97 § 6.]

**Severability**—1974 ex.s. c 97: See note following RCW 18.25.120.

## Chapter 18.26 CHIROPRACTIC DISCIPLINARY BOARD

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**18.26.010 Declaration of purpose.** This chapter is passed:

(1) In the exercise of the police power of the state and to provide an adequate public agency to act as a disciplinary body for the members of the chiropractic profession licensed to practice chiropractic in this state;

(2) Because the health and well-being of the people of this state are of paramount importance;

(3) Because the conduct of members of the chiropractic profession licensed to practice chiropractic in this state plays a vital role in preserving the health and well-being of the people of the state;

(4) Because the agency which now exists to handle disciplinary proceedings for members of the chiropractic profession licensed to practice chiropractic in this state is ineffective and very infrequently employed, and consequently there is no effective means of handling such disciplinary proceedings when they are necessary for the protection of the public health; and

(5) Because practicing other healing arts while licensed to practice chiropractic and while holding one's self out to the public as a chiropractor affects the health and welfare of the people of the state. [1967 c 171 § 1.]

*Chiropractic examining board: Chapter 18.25 RCW.*

**18.26.020 Definitions.** Terms used in this chapter shall have the meaning set forth in this section unless the context clearly indicates otherwise:

(1) "Board" means the chiropractic disciplinary board;

(2) "License" means a certificate of license to practice chiropractic in this state as provided for in chapter 18.25 RCW;

(3) "Members" means members of the chiropractic disciplinary board;

(4) "Secretary" means the secretary of the chiropractic disciplinary board. [1967 c 171 § 2.]

**18.26.025 "Chiropractic" defined.** See RCW 18.25.005.

**18.26.030 "Unprofessional conduct".** The term "unprofessional conduct" as used in this chapter and chapter 18.25 RCW shall mean the following items or any one or combination thereof:

(1) Conviction in any court of any offense involving moral turpitude, in which case the record of such conviction shall be conclusive evidence;

(2) Fraud or deceit in the obtaining of a license to practice chiropractic;

(3) All advertising of chiropractic practice or business, other than professional cards, telephone listings, window and street signs, announcements of office openings or change in locations, as regulated by the board: *Provided*, That nothing in this section shall prohibit public relations material which is distributed in a licensee's office or directly to a bona fide patient of a licensee: *Provided further*, That any such public relations material does not have a tendency to deceive the public or impose upon credulous or ignorant persons and so be harmful or injurious to public morals or safety;

- (4) The impersonation of another licensed practitioner;
- (5) Habitual intemperance;
- (6) The wilful betrayal of a professional secret;
- (7) Acts of gross misconduct in the practice of the profession;
- (8) Aiding or abetting an unlicensed person to practice chiropractic;
- (9) A declaration of mental incompetency by a court of competent jurisdiction;
- (10) Failing to differentiate chiropractic care from any and all other methods of healing at all times;
- (11) Practicing contrary to laws regulating the practice of chiropractic;
- (12) Unprofessional conduct as defined in chapter 19.68 RCW;
- (13) Violation of any ethical standard as established by the board;
- (14) Suspension or revocation of license to practice chiropractic by competent authority in any state or foreign jurisdiction;
- (15) Incompetency to practice chiropractic by reason of illness, drunkenness, excessive use of controlled substances, chemicals, or any other type of material or as a result of any mental or physical condition. [1975 1st ex.s. c 39 § 1; 1974 ex.s. c 97 § 12; 1967 c 171 § 3.]

**Severability**—1975 1st ex.s. c 39: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 39 § 10.]

**Severability**—1974 ex.s. c 97: See note following RCW 18.25.120. Application of RCW 18.26.030(12): RCW 18.26.310.

**18.26.035 Unprofessional conduct—Filing of certificate or order of revocation or suspension of license—Appeal.** The filing by the board in the office of the director of motor vehicles of a certificate or order of revocation or suspension after due notice, hearing and findings in accordance with the procedure specified in this chapter, certifying that any holder of a license has been found guilty of unprofessional conduct by the board, shall constitute a revocation or suspension of the license to practice chiropractic in this state in accordance with the terms and conditions imposed by the board and embodied in the certificate or order of revocation or suspension. Such certificate or order of revocation or suspension, if appealed, may be stayed by the board or by the reviewing court upon such terms as is deemed proper. [1974 ex.s. c 97 § 15.]

**Severability**—1974 ex.s. c 97: See note following RCW 18.25.120.

**18.26.037 Mental or physical examination of chiropractor—Authority of board—Admissibility—Limitation.** In enforcing any provision of \*this 1975 amendatory act relating to the competency of a chiropractor to practice chiropractic, the board shall, upon probable cause, have authority to compel a chiropractor to submit to a mental or physical examination. Failure of a chiropractor to submit to such examination when directed shall constitute an admission of the allegations against him unless the failure was due to circumstances beyond his control, consequent upon which a default and

final order may be entered without the taking of testimony or presentation of evidence: *Provided, however,* That upon request a chiropractor may obtain an independent mental or physical examination by a licensed physician of his choice, and the results of such examination shall also be considered by the board.

For the purposes of this section, every chiropractor licensed under this chapter who shall accept the privilege to practice chiropractic in this state shall by so practicing or by the making and filing of annual registration to practice chiropractic in this state, be deemed to have given his consent to submit to a mental or physical examination when directed in writing by the board and, further, to have waived all objections to the admissibility of the examining physicians' testimony or examination reports on the ground that the same constitute a privileged communication.

In any proceeding under this section, neither the record of proceedings nor the orders entered by the board shall be used against a chiropractor in any other proceeding. [1975 1st ex.s. c 39 § 9.]

**\*Reviser's note:** "this 1975 amendatory act" [1975 1st ex.s. c 39] consist of this section, amendments to RCW 18.26.030, 18.26.110, 18.26.120, 18.26.130, 18.26.160, 18.26.170, 18.26.180 and 18.26.270 and the repeal of RCW 18.26.260.

**Severability**—1975 1st ex.s. c 39: See note following RCW 18.26.030.

**18.26.040 Board created—Composition—Terms.** There is hereby created the Washington state chiropractic disciplinary board to be composed of three members to be named by the Washington Chiropractors Association, Incorporated and three members to be named by the Chiropractic Society of Washington and one additional member who shall be the director of the department of motor vehicles or his designee from the department of motor vehicles. Initial members shall be named within thirty days after the effective date of this chapter, whose names and addresses shall be promptly sent to the director of motor vehicles, and such board shall meet and organize at a time and place to be determined by the director of the department of motor vehicles within sixty days after the effective date of this chapter and after written notice to the named members of such date and place.

The director of the department of motor vehicles or his designee shall designate the terms of the initial members of the disciplinary board. For terms beginning January 1, 1975, one initial member from each of the two groups, the Washington Chiropractors Association, Incorporated, and the Chiropractic Society of Washington, shall be designated for a one-year term, one member from each group shall be designated for a two-year term, and one member from each group shall be designated for a three-year term.

Thereafter, each of said groups shall, annually, designate the members of the board who shall succeed to said position upon the expiration of said initial term. Such subsequent designations shall be for a term of three years, except the director or his designee from the department of motor vehicles. [1974 ex.s. c 97 § 13; 1967 c 171 § 4.]



**Severability**—1974 ex.s. c 97: See note following RCW 18.25.120.

**18.26.050 Vacancies.** Vacancies on the board shall be filled as provided for initially for the position for which a vacancy exists. The vacancy shall be filled within thirty days of the existence thereof and the director of the department of motor vehicles shall be informed of the name and address of the person named to fill the vacancy. [1967 c 171 § 5.]

**18.26.060 Removal of members.** Any member of the board may be removed by the governor for neglect of duty, misconduct or malfeasance or misfeasance in office, after being given a written statement of the charges against him and sufficient opportunity to be heard thereon. [1967 c 171 § 6.]

**18.26.070 Compensation and reimbursement of members.** Members of the board may be paid thirty-five dollars for each day spent in performing their duties as members of the board and may be paid their travel expenses while engaged in the business of the board in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, with such reimbursement to be paid out of the general fund on vouchers approved by the budget director and signed by the director of motor vehicles. [1975-'76 2nd ex.s. c 34 § 33; 1974 ex.s. c 97 § 14; 1967 c 171 § 7.]

**Effective date**—**Severability**—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

**Severability**—1974 ex.s. c 97: See note following RCW 18.25.120.

**18.26.080 Territorial scope of operations.** The board may meet, function, and exercise its powers at any place within the state. [1967 c 171 § 8.]

**18.26.090 Officers—Meetings—Quorum.** The board shall elect from its members a chairman, vice-chairman, and secretary, who shall serve for one year and until their successors are elected and qualified. The board shall meet at least once a year or oftener upon the call of the chairman at such times and places as the chairman shall designate. Five members shall constitute a quorum to transact the business of the board. [1967 c 171 § 9.]

**18.26.100 Immunity from suit.** Members of the board shall be immune from suit in any action, civil or criminal, based upon any disciplinary proceedings or other official acts performed in good faith as members of such board. [1967 c 171 § 10.]

**18.26.110 Powers and duties.** The board shall have the following powers and duties:

(1) To adopt, amend and rescind such rules and regulations as it deems necessary to carry out the provisions of this chapter;

(2) To establish and promulgate by rules and regulations ethical standards for the chiropractic profession including, but not limited to, regulations relating to advertising, or excessive charging for professional services.

(3) To investigate all complaints and charges of unprofessional conduct against any holder of a license to practice chiropractic and to hold hearings to determine whether such charges are substantiated or unsubstantiated;

(4) To employ necessary stenographic or clerical help;

(5) To issue subpoenas and administer oaths in connection with any investigation, hearing, or disciplinary proceeding held under this chapter;

(6) To take or cause depositions to be taken as needed in any investigation, hearing, or proceeding. [1975 1st ex.s. c 39 § 2; 1967 c 171 § 11.]

**Severability**—1975 1st ex.s. c 39: See note following RCW 18.26.030.

**18.26.120 Complaints—Hearing committee.** Any person, firm, corporation, or public officer may submit a written complaint to the secretary charging the holder of a license to practice chiropractic with unprofessional conduct, specifying the grounds therefor. If the board determines that such complaint merits consideration, or if the board shall have reason to believe, without a formal complaint, that any holder of a license has been guilty of unprofessional conduct, the chairman may designate three members to serve as a committee to hear and report upon such charges, or the board may sit as a whole to hear such charges, or the board may designate a hearing officer to hear and report to the board upon such charges. [1975 1st ex.s. c 39 § 3; 1967 c 171 § 12.]

**Severability**—1975 1st ex.s. c 39: See note following RCW 18.26.030.

**18.26.130 Specification of charges.** Prior to any hearing being conducted, the secretary or the attorney for the board shall prepare a specification of the charge or charges of unprofessional conduct made against a license holder, a copy of which shall be served upon the accused, together with a notice of the hearing. [1975 1st ex.s. c 39 § 4; 1967 c 171 § 13.]

**Severability**—1975 1st ex.s. c 39: See note following RCW 18.26.030.

**18.26.140 Time, notice of hearing.** The time of hearing shall be fixed by the secretary as soon as convenient, but not earlier than thirty days after service of the charges upon the accused. The secretary shall issue a notice of hearing of the charges, which notice shall specify the time and place of hearing and shall notify the accused that he may file with the secretary a written response within twenty days of the date of service. Such notice shall also notify the accused that a stenographic record of the proceeding will be kept, that he will have the opportunity to appear personally and to have counsel present, with the right to produce witnesses and evidence in his own behalf, to cross-examine witnesses testifying against him, to examine witnesses testifying for him, to examine such documentary evidence as may be produced against him, and to have witnesses subpoenaed by the board. [1967 c 171 § 14.]

**18.26.150 Subpoenas—Contempt.** Subpoenas issued by the board to compel the attendance of witnesses at any investigation or hearing shall be served in accordance with the provisions of law governing the service of subpoenas in court actions. The board shall issue subpoenas at the request and on the behalf of the accused. In case any person contumaciously refuses to obey a subpoena issued by the board or to answer any proper question put to him during the hearing or proceeding, the board may petition the superior court of any county in which the proceeding is held or in which such person resides or is found and the said court shall issue to such person an order requiring him to appear before the board or its hearing committee, there to produce evidence if so ordered, or there to give testimony concerning the matter under investigation or question. Any failure to obey such order of the court may be punished by the court as a civil contempt may be punished. [1967 c 171 § 15.]

**18.26.160 Report of hearing.** If a hearing officer or hearing committee has been appointed, within a reasonable time after holding a hearing, the hearing committee or hearing officer shall make a written report of its findings of fact and its recommendations, and the same shall be forthwith transmitted to the secretary, with a transcript of the evidence. [1975 1st ex.s. c 39 § 5; 1967 c 171 § 16.]

**Severability—1975 1st ex.s. c 39:** See note following RCW 18.26.030.

**18.26.170 Hearing before full board.** If a hearing officer or hearing committee has been appointed, and the board deems it necessary, the board may, after further notice to the accused, take further testimony at a second hearing before the full board. [1975 1st ex.s. c 39 § 6; 1967 c 171 § 17.]

**Severability—1975 1st ex.s. c 39:** See note following RCW 18.26.030.

**18.26.180 Basis for board's determination.** In any event, whether the board makes its determination on the findings of the board acting as a whole, or on the findings of the hearing officer or the hearing committee, or on the findings of the hearing officer or the hearing committee as supplemented by a second hearing before the board, the board shall determine the charge or charges upon the merits on the basis of the evidence in the record before it. [1975 1st ex.s. c 39 § 7; 1967 c 171 § 18.]

**Severability—1975 1st ex.s. c 39:** See note following RCW 18.26.030.

**18.26.190 Certificate of revocation or suspension—Reprimand.** If a majority of the members of the board then sitting vote in favor of finding the accused guilty of unprofessional conduct as specified in the charges, or any of the charges the board shall prepare written findings of fact and may thereafter prepare and file in the office of the director of motor vehicles a certificate or order of revocation or suspension, in which case a copy thereof shall be served upon the accused, or the board

may reprimand the accused, as it deems most appropriate. [1967 c 171 § 19.]

**18.26.200 Dismissal of charges—Exoneration.** If the license holder is found not guilty, or if less than a majority of the members then sitting vote for a finding of guilty, the board shall forthwith order a dismissal of the charges and the exoneration of the accused. When a proceeding has been dismissed, either on the merits or otherwise, the board shall relieve the accused from any possible odium that may attach by reason of the charges made against him by such public exoneration as is necessary, if requested by the accused to do so. [1967 c 171 § 20.]

**18.26.210 Revocation or suspension of licenses—Stay pending review.** The filing by the board in the office of the director of motor vehicles of a certificate or order of revocation or suspension after due notice, hearing and findings in accordance with the procedure specified in this chapter, certifying that any holder of a license has been found guilty of unprofessional conduct by the board, shall constitute a revocation or suspension of the license to practice chiropractic in this state in accordance with the terms and conditions imposed by the board and embodied in the certificate or order of revocation or suspension: *Provided*, That if the licensee seeks judicial review of the board's decision pursuant to the provisions of this chapter, such revocation or the period of such suspension shall be stayed and shall not be effective or commence to run until final judgment has been entered in any proceeding instituted under the provisions of this chapter and the licensee's judicial remedies are exhausted hereunder. [1967 c 171 § 21.]

**18.26.220 Contents of certificate or order—Recording.** The certificate or order of revocation or suspension shall contain a brief and concise statement of the ground or grounds upon which the certificate or order is based and the specific terms and conditions of such revocation or suspension, and shall be retained as a permanent record by the director of motor vehicles. [1967 c 171 § 22.]

**18.26.230 Issuance of license after revocation or suspension.** The director of motor vehicles shall not issue any license or any renewal thereof to any person whose license has been revoked or suspended by the board except in conformity with the terms and conditions of the certificate or order of revocation or suspension, or in conformity with any order of reinstatement issued by the board, or in accordance with the final judgment in any proceeding for review instituted under the provisions of this chapter. [1967 c 171 § 23.]

**18.26.240 Appeal from decision of board.** Any person whose license has been revoked or suspended by the board shall have the right to a judicial review of the board's decision. Such review shall be initiated by serving on the secretary a notice of appeal and filing such notice of appeal either in the superior court of Thurston county, or in the superior court of the county in which

the appellant resides, within thirty days after the filing of the certificate or order of revocation or suspension in the office of the director of motor vehicles. [1967 c 171 § 24.]

**18.26.250 Appeal from decision of board—Transmittal of transcript.** The secretary shall, within twenty days after the service of the notice of appeal, transmit to the clerk of the superior court to which the appeal is taken a transcript of the record before the board, certified under the seal of the board, together with a certified copy of the board's written findings. [1967 c 171 § 25.]

**18.26.270 Appeal from decision of board—Appeal procedure.** The procedure governing appeals to the superior court under chapter 34.04 RCW, the Administrative Procedure Act, shall govern in matters of appeal from a decision of the board. [1975 1st ex.s. c 39 § 8; 1967 c 171 § 27.]

**Severability—1975 1st ex.s. c 39:** See note following RCW 18.26.030.

**18.26.280 Appeal from judgment of superior court.** An aggrieved party may secure a review of any final judgment of the superior court. Such appeal shall be taken in the manner provided by law for appeals from the superior court in other civil cases. [1967 c 171 § 28.]

**18.26.290 Review though revocation not timely filed.** If the board finds the holder of any license guilty of unprofessional conduct and fails to file a certificate or order of revocation or suspension in the office of the director of motor vehicles within thirty days, the license holder shall have the right to a judicial review of such finding of the board in the same manner and to the same extent as if the certificate or order had been filed. [1967 c 171 § 29.]

**18.26.300 Engaging in healing arts other than as chiropractor—Surrender of license—Discontinuance of use of name.** No person licensed as a chiropractor shall engage in the practice of healing arts other than as a chiropractor, unless he first surrenders his chiropractic license to the director of motor vehicles and discontinues the use of the name chiropractor whether by way of advertising or in any other manner which might signify he is practicing as a chiropractor within the meaning of this chapter. [1967 c 171 § 30.]

**18.26.310 Engaging in healing arts other than as chiropractor—Application of RCW 18.26.030(12) and 18.26.300.** The provisions of RCW 18.26.030(12) and 18.26.300 shall not apply to persons holding a license to practice other healing arts as of the effective date of this chapter, but shall only apply to persons so licensed after the effective date of this chapter. [1967 c 171 § 32.]

**18.26.900 Severability—1967 c 171.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 c 171 § 31.]

## Chapter 18.27 REGISTRATION OF CONTRACTORS

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*Actions or claims for construction of improvements upon real property, accrual and limitations upon: RCW 4.16.300–4.16.320.*

*Mechanics' and materialmen's liens, registered contractors agents of owner in establishment of rights: RCW 60.04.010.*

**18.27.010 Definitions.** A "contractor" as used in this chapter is any person, firm or corporation who or which, in the pursuit of an independent business undertakes to, or offers to undertake, or submits a bid to, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other structure, project, development, or improvement attached to real estate or to do any part thereof including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works in connection therewith or who installs or repairs roofing or siding; or, who, to do similar work upon his own property, employs members of more than one trade upon a single job or project or under a single building permit except as otherwise provided herein. A "general contractor" is a contractor whose business operations require the use of more than two unrelated building trades or crafts whose work the contractor shall superintend or do in whole or in part; the term "general contractor" shall not include an individual who does all work personally without employees or other "specialty contractors" as defined herein. The terms "general contractor" and "builder" are synonymous. A "specialty contractor" is a contractor whose operations as such do not fall within the foregoing definition of "general contractor".

"Department" as used in this chapter means the department of labor and industries.

"Director" as used in this chapter means the director of the department of labor and industries. [1973 1st ex.s.]

153 § 1; 1972 ex.s. c 118 § 1; 1967 c 126 § 5; 1963 c 77 § 1.]

**Effective date**—1963 c 77: "This act shall take effect August 1, 1963." [1963 c 77 § 12.]

**18.27.020 Registration required—Partnerships, joint ventures—Penalties.** (1) It shall be unlawful for any person to submit any bid or do any work as a contractor until such person shall have been issued a certificate of registration by the state department of labor and industries. A partnership or joint venture shall be deemed registered if any one of the general partners or venturers whose name appears in the name under which the partnership or venture does business shall be registered. A violation of this section shall be a misdemeanor.

(2) In addition to any criminal penalties which may be imposed under the provisions of subsection (1) of this section, any person who is found to be in violation of this section by the director at a hearing held in accordance with the Administrative Procedure Act, chapter 34.04 RCW, shall be required to pay a late registration penalty of not more than one hundred dollars, such amount to be set by the director, in addition to the registration fee provided in RCW 18.27.070, as now or hereafter amended. [1973 1st ex.s. c 153 § 2; 1963 c 77 § 2.]

**18.27.030 Application for registration.** An applicant for registration as a contractor shall submit an application under oath upon a form to be prescribed by the director and which shall include the following information pertaining to the applicant:

- (1) Employer social security number.
- (2) Industrial insurance number.
- (3) Employment security department number.
- (4) State excise tax registration number.
- (5) Type of contracting activity, whether a general or a specialty contractor and if the latter, the type of specialty.
- (6) The name and address of each partner if the applicant be a firm or partnership, or the name and address of the owner if the applicant be an individual proprietorship, or the name and address of the corporate officers and statutory agent, if any, if the applicant be a corporation. The information contained in such application shall be a matter of public record and open to public inspection. [1973 1st ex.s. c 153 § 3; 1963 c 77 § 3.]

**18.27.040 Bond or other security required—Actions against—Suspension of registration upon impairment.** Each applicant shall, at the time of applying for a certificate of registration, file with the department a surety bond issued by a surety insurer who meets the requirements of chapter 48.28 RCW in a form acceptable to the department running to the state of Washington if a general contractor, in the sum of two thousand dollars; if a specialty contractor, in the sum of one thousand dollars, conditioned that the applicant will pay all persons performing labor, including employee benefits, for the contractor, will pay all taxes and contributions due to the state of Washington, and will pay all persons furnishing labor or material or renting or supplying equipment to the contractor and will pay all

amounts that may be adjudged against the contractor by reason of negligent or improper work or breach of contract in the conduct of the contracting business. Any person having a claim against the contractor for any of the items referred to in this section may bring suit upon such bond in the superior court of the county in which the work is done or of any county in which jurisdiction of the contractor may be had. Action upon such bond or deposit shall be commenced by serving and filing of the complaint within one year from the date of expiration of the certificate of registration in force at the time the claimed labor was performed and benefits accrued, taxes and contributions owing the state of Washington became due, materials and equipment were furnished, or the claimed contract work was completed. Three copies of the complaint shall be served by registered or certified mail upon the department at the time suit is started and the department shall maintain a record, available for public inspection, of all suits so commenced. Such service shall constitute service on the registrant and the surety for suit upon the bond and the department shall transmit the complaint or a copy thereof to the registrant at the address listed in his application and to the surety within forty-eight hours after it shall have been received. The surety upon the bond shall not be liable in an aggregate amount in excess of the amount named in the bond. The surety upon the bond may, upon notice to the department and the parties, tender to the clerk of the court having jurisdiction of the action an amount equal to the claims thereunder or the amount of the bond less the amount of judgments, if any, previously satisfied therefrom and to the extent of such tender the surety upon the bond shall be exonerated but if the actions commenced and pending at any one time exceed the amount of the bond then unimpaired, claims shall be satisfied from the bond in the following order:

- (1) Labor, including employee benefits;
- (2) Claims for breach of contract by a party to the construction contract;
- (3) Material and equipment;
- (4) Taxes and contributions due the state of Washington;
- (5) Any court costs, interest, and attorney's fees plaintiff may be entitled to recover.

In the event that any final judgment shall impair the liability of the surety upon the bond so furnished that there shall not be in effect a bond undertaking in the full amount prescribed in this section, the department shall suspend the registration of such contractor until the bond liability in the required amount unimpaired by unsatisfied judgment claims shall have been furnished.

In lieu of the surety bond required by this section the contractor may file with the department a deposit consisting of cash or other security acceptable to the department.

Any person having an unsatisfied final judgment against the registrant for any items referred to in this section may execute upon the security held by the department by serving a certified copy of the unsatisfied final judgment by registered or certified mail upon the department within one year of the date of entry of such judgment. Upon the receipt of service of such certified

copy the department shall pay or order paid from the deposit through the registry of the superior court which rendered judgment, towards the amount of the unsatisfied judgment. The priority of payment by the department shall be the order of receipt by the department, but the department shall have no liability for payment in excess of the amount of the deposit.

The director may promulgate rules and regulations necessary for the proper administration of the security. [1973 1st ex.s. c 153 § 4; 1972 ex.s. c 118 § 2; 1967 c 126 § 1; 1963 c 77 § 4.]

*Unpaid wages by public works contractor constitute lien against bond: RCW 39.12 050.*

**18.27.050 Insurance required—Suspension of registration upon impairment.** At the time of registration the applicant shall furnish to the director satisfactory evidence that the applicant has procured and has in effect public liability and property damage insurance covering the applicant's contracting operations in the sum of not less than twenty thousand dollars for injury or damage to property and fifty thousand dollars for injury or damage including death to any one person and one hundred thousand dollars for injury or damage including death to more than one person.

In the event that such insurance shall cease to be effective the registration of the contractor shall be suspended until such insurance shall be reinstated. [1963 c 77 § 5.]

**18.27.060 Certificate of registration—Issuance, duration, renewal.** A certificate of registration shall be valid for one year and shall be renewed by the same procedure as for an original registration on or before August first of each year. The director shall issue to the applicant a certificate of registration upon compliance with the registration requirements of this chapter. [1963 c 77 § 6.]

**18.27.070 Registration and renewal fees.** The applicant shall pay to the director a registration or renewal fee of, if a general contractor, or if a specialty contractor, fifteen dollars. [1973 1st ex.s. c 153 § 5; 1967 c 126 § 2; 1963 c 77 § 7.]

**18.27.080 Registration prerequisite to suit.** No person engaged in the business or acting in the capacity of a contractor may bring or maintain any action in any court of this state for the collection of compensation for the performance of any work or for breach of any contract for which registration is required under this chapter without alleging and proving that he was a duly registered contractor and held a current and valid certificate of registration at the time he contracted for the performance of such work or entered into such contract. [1972 ex.s. c 118 § 3; 1963 c 77 § 8.]

**18.27.085 Registration prerequisite to suit—RCW 18.27.080 inapplicable to any agreement, contract or work or action pending thereon for period from August 1, 1963 to December 24, 1965.** Notwithstanding the provisions of \*section 12, chapter 77, Laws of 1963 or any

other provision of law, the provisions of section 8, chapter 77, Laws of 1963 and RCW 18.27.080 shall not apply to any agreement or contract or performance of work or breach of contract covering the period from August 1, 1963 to December 24, 1965 or action pending thereon not foreclosed by the entry of a final judgment by or against any person in the business of acting in the capacity of a contractor. [1967 c 126 § 6.]

\*Reviser's note: "section 12, chapter 77, Laws of 1963" appears in the note following RCW 18.27.010.

**18.27.090 Exemptions.** This chapter shall not apply to:

(1) An authorized representative of the United States government, the state of Washington, or any incorporated city, town, county, township, irrigation district, reclamation district, or other municipal or political corporation or subdivision of this state;

(2) Officers of a court when they are acting within the scope of their office;

(3) Public utilities operating under the regulations of the public service commission in construction, maintenance, or development work incidental to their own business;

(4) Any construction, repair, or operation incidental to the discovering or producing of petroleum or gas, or the drilling, testing, abandoning, or other operation of any petroleum or gas well or any surface or underground mine or mineral deposit when performed by an owner or lessee;

(5) The sale or installation of any finished products, materials, or articles of merchandise which are not actually fabricated into and do not become a permanent fixed part of a structure;

(6) Any construction, alteration, improvement, or repair of personal property;

(7) Any construction, alteration, improvement, or repair carried on within the limits and boundaries of any site or reservation under the legal jurisdiction of the federal government;

(8) Any person who only furnished materials, supplies, or equipment without fabricating them into, or consuming them in the performance of, the work of the contractor;

(9) Any work or operation on one undertaking or project by one or more contracts, the aggregate contract price of which for labor and materials and all other items is less than two hundred fifty dollars, such work or operations being considered as of a casual, minor, or inconsequential nature. The exemption prescribed in this subsection does not apply in any instance wherein the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made into contracts of amounts less than two hundred fifty dollars for the purpose of evasion of this chapter or otherwise. The exemption prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or other device which might indicate to the public that he is a contractor, or that he is qualified to engage in the business of contractor;

(10) Any construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts or reclamation districts; or to farming, dairying, agriculture, viticulture, horticulture, or stock or poultry raising; or to clearing or other work upon land in rural districts for fire prevention purposes; except when any of the above work is performed by a registered contractor;

(11) An owner who contracts for a project with a registered contractor;

(12) Any person working on his own property, whether occupied by him or not, and any person working on his residence, whether owned by him or not but this exemption shall not apply to any person otherwise covered by this chapter who constructs an improvement on his own property with the intention and for the purpose of selling the improved property;

(13) Owners of commercial properties who use their own employees to do maintenance, repair, and alteration work in or upon their own properties;

(14) A licensed architect or civil or professional engineer acting solely in his professional capacity, an electrician licensed under the laws of the state of Washington, or a plumber licensed under the laws of the state of Washington or licensed by a political subdivision of the state of Washington while operating within the boundaries of such political subdivision. The exemption provided in this subsection is applicable only when the licensee is operating within the scope of his license;

(15) Any person who engages in the activities herein regulated as an employee of a registered contractor with wages as his sole compensation or as an employee with wages as his sole compensation;

(16) Contractors on highway projects who have been prequalified as required by chapter 13 of the Laws of 1961, RCW 47.28.070, with the highway department to perform highway construction, reconstruction, or maintenance work. [1974 ex.s. c 25 § 2. Prior: 1973 1st ex.s. c 161 § 1; 1973 1st ex.s. c 153 § 6; 1967 c 126 § 3; 1965 ex.s. c 170 § 50; 1963 c 77 § 9.]

**18.27.100 Business practices.** Except as provided in RCW 18.27.020 for partnerships and joint ventures, no person who has registered under one name as provided in this chapter shall engage in the business, or act in the capacity of a contractor under any other name unless such name also is registered hereunder. All advertising and all contracts, correspondence, cards, signs, posters, papers and documents prepared by a contractor which show a contractor's name or address shall show the contractor's name or address as registered hereunder. No contractor shall advertise that he is bonded and insured because of the bond required to be filed and sufficiency of insurance as provided in this chapter. All individual contractors and all partners, associates, agents, salesmen, solicitors, officers and employees of contractors shall use their true names and addresses at all times while engaged in the business or capacity of a contractor or activities related thereto. [1963 c 77 § 10.]

**18.27.110 Construction building permits—Cities, towns or counties prohibited from issuing without proof**

**of registration.** No city, town or county shall issue a construction building permit for work which is to be done by any contractor required to be registered under chapter 77, Laws of 1963 and chapter 18.27 RCW without proof that such contractor is currently registered as required by law. [1967 c 126 § 4.]

**18.27.111 Public works, contracts with unregistered contractors prohibited.** See RCW 39.06.010.

**18.27.120 Department to compile, update list of registered contractors—Availability, fee.** The department shall annually, starting July 1, 1973, compile a list of all contractors registered pursuant to the provisions of this chapter and update such list at least bimonthly. Such list shall be considered as public record information and shall be available to the public upon request: *Provided*, That the department may charge a reasonable reproduction fee. [1973 1st ex.s. c 153 § 7; 1972 ex.s. c 118 § 5.]

**18.27.130 Provisions of chapter exclusive—Certain authority of cities and towns not limited or abridged.** The provisions of this chapter relating to the registration or licensing of any person, firm, or corporation, including the requirement of a bond with the state of Washington named as obligee therein and the collection of a fee therefor, shall be exclusive and no political subdivision of the state of Washington shall require or issue any registrations, licenses, or bonds nor charge any fee for the same or a similar purpose: *Provided*, That nothing herein shall limit or abridge the authority of any city or town to levy and collect a general and nondiscriminatory license fee levied upon all businesses, or to levy a tax based upon gross business conducted by any firm within said city: *Provided, further*, That nothing herein shall limit the authority of any city or town with respect to contractors not required to be registered under this chapter. [1972 ex.s. c 118 § 4.]

**18.27.140 Purpose of chapter.** It is the purpose of this chapter to afford protection to the public from unreliable, fraudulent, financially irresponsible, or incompetent contractors. [1973 1st ex.s. c 161 § 2.]

**18.27.900 Severability—1963 c 77.** If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. [1963 c 77 § 11.]

## Chapter 18.28 DEBT ADJUSTING

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**18.28.010 Definitions.** Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Debt adjusting" means the managing, counseling, settling, adjusting, prorating, or liquidating of the indebtedness of a debtor, or receiving funds for the purpose of distributing said funds among creditors in payment or partial payment of obligations of a debtor.

(2) "Debt adjuster", which includes any person known as a debt pooler, debt manager, debt consolidator, debt prorater, or credit counselor, is any individual person engaging in or holding himself out as engaging in the business of debt adjusting for compensation. The term shall not include:

(a) Attorneys at law, escrow agents, accountants, broker-dealers in securities, or investment advisors in securities, while performing services solely incidental to the practice of their professions;

(b) Any person, partnership, association, or corporation doing business under and as permitted by any law of this state or of the United States relating to banks, small loan companies, industrial loan companies, trust companies, mutual savings banks, savings and loan associations, building and loan associations, credit unions, crop credit associations, development credit corporations, industrial development corporations, title insurance companies, or insurance companies;

(c) Persons who, as employees on a regular salary or wage of an employer not engaged in the business of debt adjusting, perform credit services for their employer;

(d) Public officers while acting in their official capacities and persons acting under court order;

(e) Any person while performing services incidental to the dissolution, winding up or liquidation of a partnership, corporation, or other business enterprise;

(f) Nonprofit organizations dealing exclusively with debts owing from commercial enterprises to business creditors;

(g) Nonprofit organizations engaged in debt adjusting and which do not assess against the debtor a service charge in excess of five dollars per month.

(3) "Debt adjusting agency" is any partnership, corporation, or association engaging in or holding itself out as engaging in the business of debt adjusting.

(4) "License" means a debt adjuster license or debt adjusting agency license issued under the provisions of this chapter.

(5) "Licensee" means a debt adjuster or debt adjusting agency to whom a license has been issued under the provisions of this chapter.

(6) "Director" means the director of the department of motor vehicles. [1970 ex.s. c 97 § 1; 1967 c 201 § 1.]

**18.28.020 License required.** No debt adjuster, debt adjusting agency, or branch office of any debt adjusting agency may engage in the business of debt adjusting within this state except as authorized by this chapter and without first obtaining a license from the director. [1967 c 201 § 2.]

**18.28.030 Application for license, form, contents—Investigation fees—Licensing fees—Bond—Qualifications—Forms to be furnished.** An application for a license shall be in writing, under oath, and in the form prescribed by the director. The application shall contain such relevant information as the director may require, but in all cases shall contain the name and residential and business addresses of each individual applicant, and of each member when the applicant is a partnership or association, and of each director and officer when the applicant is a corporation.

Except as provided hereinafter in this section the applicant shall pay an investigation fee and a licensing fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended: *Provided*, That a branch office of a licensed debt adjusting agency need not pay an investigation fee but only the licensing fee. If a license is not issued in response to the application, the director shall return the licensing fee to the applicant. An annual license fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, shall be paid to the director by January 1st of each year. If the annual license fee is not paid by January 1st, the licensee shall be assessed a penalty for late payment determined by the director as provided in RCW 43.24.085 as now or hereafter amended. And if the fee and penalty are not paid by January 31st, reapplication for a new license will be necessary, which may include taking any examination prescribed by the director.

The applicant shall file a surety bond with the director or in lieu thereof the applicant may file with the director a cash deposit or other negotiable security acceptable to the director and under conditions set forth in RCW 18.28.040: *Provided*, That each branch office of a debt adjusting agency shall be required to be bonded as provided herein, but no bond will be required of an individual applicant while he is employed by a bonded debt adjusting agency or branch thereof.

The applicant shall furnish the director with such proof as the director may reasonably require to establish the qualifications set forth in RCW 18.28.060.

If the applicant is an individual person making an original license application he shall pay an examination



fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended.

If the applicant is applying for a debt adjusting agency license it shall furnish the director with complete forms of all contracts and assignments designed for execution by debtors making any assignments to or placing any property with the applicant for the purpose of paying the creditors of such debtors, and complete forms of all contracts and agreements designed for execution by creditors to whom payments are made by the applicant. Only such forms furnished the director and not disapproved by him shall be used by a debt adjusting agency licensee. [1975 1st ex.s. c 30 § 23; 1971 ex.s. c 266 § 6; 1967 c 201 § 3.]

**18.28.040 Bond requirements—Security in lieu of bond.** The bond, required in RCW 18.28.030, shall be a surety bond, annually renewable on January 1st, to be approved by the director as to form and content, in the sum of ten thousand dollars, executed by the applicant as principal and by a surety company authorized to do business in this state as a surety, whose liability shall not exceed the said sum in the aggregate. Such bond shall run to the state of Washington as obligee for the benefit of the state and of any person or persons who may have cause of action against the principal of said bond under the provisions of this chapter. Such bond shall be conditioned that said principal as licensee hereunder will not commit any fraudulent act and will comply with the provisions of this chapter and the rules lawfully adopted hereunder, and will pay to the state and any such person or persons any and all moneys that may become due and owing from such principal under and by virtue of the provisions of this chapter. The surety on such bond shall be released and discharged from all liability accruing on such bond after the expiration of thirty days from the date upon which such surety shall have lodged with the director a written request to be released and discharged, but this provision shall not operate to relieve, release or discharge the surety from any liability already accrued or which shall accrue before the expiration of the thirty day period. The director shall promptly upon receiving any such request notify the principal who furnished the bond; and unless the principal shall, on or before the expiration of the thirty day period, file a new bond, the director shall forthwith cancel the principal's license.

An applicant for a license under this chapter may furnish, file and deposit with the director, in lieu of the surety bond provided for herein, United States currency or bonds, representing obligations of the United States, or bonds of the state of Washington or any legal subdivision thereof, for which the faith of the United States, the state of Washington or any legal subdivision thereof is pledged, for the payment of both the principal and interest, equal in amount to the amount of the bond required by this chapter. The security deposited with the director in lieu of the surety bond shall be returned to the licensee at the expiration of three years after the license issued thereon has expired or been revoked if no legal action has been instituted against the licensee or on the bond at the expiration of said three years. [1967 c 201 § 4.]

**18.28.050 Action on bond or security.** If the licensee has failed to account to a debtor or distribute to the debtor's creditors such amounts as are required by this chapter and the contract between the debtor and licensee, the debtor, his legal representative or receiver, or the director, shall have, in addition to all other legal remedies, a right of action in the name of the debtor on the bond or the security given pursuant to the provisions of RCW 18.28.040, for loss suffered by the debtor, not exceeding the face of the bond or security, and without the necessity of joining the licensee in such suit or action. No action shall be brought upon any bond or security given under RCW 18.28.040 after the expiration of three years from the revocation or expiration of the license issued thereon. Upon entering judgment for plaintiff in any action on the bond required under RCW 18.28.040, for more than the sum tendered in the court by the defendant, if any, the court shall include in the judgment reasonable compensation for services of plaintiff's attorney in the action. [1967 c 201 § 5.]

**18.28.060 Applicants for licenses—Requirements.** The director shall issue a license to an applicant if the following requirements are met:

(1) The application is complete and the applicant has complied with RCW 18.28.030.

(2) Neither an individual applicant, nor any of the applicant's members if the applicant is a partnership or association, nor any of the applicant's officers or directors if the applicant is a corporation: (a) Has ever been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or any other like offense, or has been disbarred from the practice of law; (b) has participated in a violation of this chapter or of any valid rules, orders or decisions of the director promulgated under this chapter; (c) has had a license to engage in the business of debt adjusting revoked or removed for any reason other than for failure to pay licensing fees in this or any other state; or (d) is an employee or owner of a collection agency, or process serving business.

(3) An individual applicant is at least eighteen years of age, a citizen of the United States, and a resident of this state for at least one year.

(4) An applicant which is a partnership, corporation, or association is authorized to do business in this state.

(5) An individual applicant for an original license as a debt adjuster has passed an examination administered by the director, which examination may be oral or written, or partly oral and partly written, and shall be practical in nature and sufficiently thorough to ascertain the applicant's fitness. Questions on bookkeeping, credit adjusting, business ethics, agency, contracts, debtor and creditor relationships, trust funds and the provisions of this chapter may be included in the examination. [1971 ex.s. c 292 § 20; 1967 ex.s. c 141 § 1; 1967 c 201 § 6.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**18.28.070 Licenses—Form—Contents—Display—Transferability.** Each license shall:

(1) Be in the form and size prescribed by the director;

(2) Show the name of the licensee and the address at which the business of debt adjusting is to be conducted;

(3) Show the date of expiration of the license as December 31st, and show such other matter as may be prescribed by the director;

(4) While in force, be at all times conspicuously displayed in the outer office of the debt adjusting agency or branch thereof; and

(5) Not be transferable or assignable. [1967 c 201 § 7.]

**18.28.080 Fees for debt adjusting services—Limitations—Requirements.** By contract a licensee may charge a reasonable fee for debt adjusting services, which fee may not exceed fifteen percent of the total debts reported to and listed with the licensee by the debtor and/or the debtor's listed creditors. The licensee may require an initial payment by the debtor of an amount not to exceed twenty-five dollars which initial payment shall be part of the total allowable fee contracted for, and may not otherwise take or receive for services performed for any one person more than fifteen percent of the amount received by it at any one time from or on behalf of that person.

In the event of cancellation or default on performance of the contract by the debtor prior to its successful completion, the licensee may collect in addition to fees previously received, six percent of that portion of the remaining indebtedness listed on said contract which was due when the contract was entered into, but not to exceed seventy-five dollars.

A licensee shall not be entitled to retain any fee until notifying all creditors listed by the debtor that the debtor has engaged the licensee in a program of debt adjusting. [1967 ex.s. c 141 § 2; 1967 c 201 § 8.]

**18.28.090 Excess charges—Contract void—Return of payments.** If a licensee contracts for, receives or makes any charge in excess of the maximums permitted by this chapter, except as the result of an accidental and bona fide error, the licensee's contract with the debtor shall be void and the licensee shall return to the debtor the amount of all payments received from the debtor or on his behalf and not distributed to creditors. [1967 c 201 § 9.]

**18.28.100 Contract requirements.** Every contract between a licensee and a debtor shall:

(1) List every debt to be handled with the creditor's name and disclose the approximate total of all known debts;

(2) Provide in precise terms payments reasonably within the ability of the debtor to pay;

(3) Disclose in precise terms the rate and amount of the licensee's charge;

(4) Disclose the approximate number and amount of installments required to pay the debts in full;

(5) Disclose the name and address of the licensee and of the debtor; and

(6) Contain such other and further provisions or disclosures as the director shall determine are necessary for

the protection of the debtor and the proper conduct of business by the licensee. [1967 c 201 § 10.]

**18.28.110 Licensees—Functions required to be performed.** Every licensee shall perform the following functions:

(1) Make a permanent record of all payments by debtors, or on the debtors' behalf, and of all disbursements to creditors of such debtors, and shall keep and maintain in this state all such records, and all payments not distributed to creditors. No person shall intentionally make any false entry in any such record, or intentionally mutilate, destroy or otherwise dispose of any such record. Such records shall at all times be open for inspection by the director or his authorized agent, and shall be preserved as original records or by microfilm or other methods of duplication acceptable to the director, for at least six years after making the final entry therein.

(2) Deliver a completed copy of the contract between the licensee and a debtor to the debtor immediately after the debtor executes the contract, and sign the debtor's copy of such contract.

(3) Unless paid by check or money order, deliver a receipt to a debtor for each payment within five days after receipt of such payment.

(4) Distribute to the creditors of the debtor at least once each forty days after receipt of payment during the term of the contract at least sixty percent of each payment received from the debtor. No more than twenty-five percent of any payment shall be allocated to the debtor's undistributed reserve account. In the event of cancellation or default on performance of the contract by the debtor, the licensee must distribute to the creditors of the debtor the funds of the debtor held by the licensee, less the amount retained by the licensee in accordance with RCW 18.28.080.

(5) At least once every six months render an accounting to the debtor which shall indicate the total amount received from or on behalf of the debtor, the total amount paid to each creditor, the total amount which any creditor has agreed to accept as payment in full on any debt owed him by the debtor, the amount of charges deducted, and any amount held in reserve. The licensee shall in addition render such an account to a debtor within ten days after written demand. [1967 c 201 § 11.]

**18.28.120 Licensees—Prohibited acts.** A licensee shall not:

(1) Take any contract, or other instrument which has any blank spaces when signed by the debtor;

(2) Receive or charge any fee in the form of a promissory note or other promise to pay or receive or accept any mortgage or other security for any fee, whether as to real or personal property;

(3) Lend money or credit;

(4) Take any confession of judgment or power of attorney to confess judgment against the debtor or appear as the debtor in any judicial proceedings;

(5) Take, concurrent with the signing of the contract or as a part of the contract or as part of the application for the contract, a release of any obligation to be performed on the part of the licensee;

(6) Advertise his services, display, distribute, broadcast or televise, or permit his services to be displayed, advertised, distributed, broadcasted or televised in any manner whatsoever wherein any false, misleading or deceptive statement or representation with regard to the services to be performed by the licensee, or the charges to be made therefor, is made;

(7) Offer, pay, or give any cash, fee, gift, bonus, premiums, reward, or other compensation to any person for referring any prospective customer to the licensee;

(8) Receive any cash, fee, gift, bonus, premium, reward, or other compensation from any person other than the debtor or a person in the debtor's behalf in connection with his activities as a licensee; or

(9) Disclose to anyone, other than the director or his agent, the debtors who have contracted with the licensee; nor shall the licensee disclose the creditors of a debtor to anyone other than: (a) The debtor, or (b) the director or his agent, or (c) another creditor of the debtor and then only to the extent necessary to secure the cooperation of such a creditor in a debt adjusting plan. [1967 c 201 § 12.]

**18.28.130 Legal services—Rendering or obtaining—Using name of attorney—Prohibited.** Without limiting the generality of the foregoing and other applicable laws, the licensee, manager or employee of a licensee shall not:

(1) Prepare, advise, or sign a release of attachment or garnishment, stipulation, affidavit for exemption, compromise agreement or other legal or court document, nor furnish legal advice or perform legal services of any kind;

(2) Represent that he is authorized or competent to furnish legal advice or perform legal services;

(3) Assume authority on behalf of creditors or a debtor or accept a power of attorney authorizing it to employ or terminate the services of any attorney or to arrange the terms of or compensate for such services; or

(4) Communicate with the debtor or creditor or any other person in the name of any attorney or upon the stationery of any attorney or prepare any form or instrument which only attorneys are authorized to prepare. [1967 c 201 § 13.]

**18.28.140 Assignment of wages not prohibited.** Nothing in this chapter shall be construed as prohibiting the assignment of wages by a debtor to a licensee, if such assignment is otherwise in accordance with the law of this state. [1967 c 201 § 14.]

**18.28.150 Payments by debtor to be kept in trust account—Disbursements.** Any payment received by a licensee from or on behalf of a debtor shall be held in trust by the licensee from the moment it is received. The licensee shall not commingle such payment with his own property or funds, but shall maintain a separate trust account and deposit in such account all such payments received. All disbursements whether to the debtor or to the creditors of the debtor, or to the licensee, shall be made from such account. [1967 c 201 § 15.]

**18.28.160 Revocation of licenses—Grounds.** The director shall, upon reasonable opportunity to be heard, revoke any license issued pursuant to this chapter if he finds that:

(1) The licensee has failed to renew its bond as required by this chapter;

(2) The licensee has violated any provision of this chapter or any rule, promulgated by the director under the authority of this chapter or any order or decision of the director hereunder; or

(3) Any fact or condition exists which, if it had existed at the time of the original application for such license, reasonably would have warranted the director in refusing originally to issue such license. [1967 c 201 § 16.]

**18.28.170 Rules, orders, decisions, etc.** The director may promulgate rules, make specific decisions, orders and rulings, including therein demands and findings, and take other necessary action for the implementation and enforcement of this chapter. The director may include among rules promulgated, those which describe and forbid deceptive advertising. [1967 c 201 § 17.]

**18.28.180 Administrative procedure act to govern administration.** The administrative procedure act, chapter 34.04 RCW, shall wherever applicable herein, govern the rights, remedies, and procedures respecting the administration of this chapter. [1967 c 201 § 18.]

**18.28.190 Violations—Penalty.** Any person who violates any provision of this chapter or aids or abets such violation, or any rule lawfully promulgated hereunder or any order or decision of the director hereunder, or any person who operates as a debt adjuster without a license, shall be guilty of a misdemeanor. [1967 c 201 § 19.]

**18.28.200 Violations may be enjoined.** Notwithstanding any other actions which may be brought under the laws of this state, the attorney general or the prosecuting attorney of any county within the state may bring an action in the name of the state against any person to restrain and prevent any violation of this chapter. [1967 c 201 § 20.]

**18.28.210 Violations—Assurance of discontinuance—Effect.** The attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter in the enforcement thereof from any person engaging in or who has engaged in such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in the alternative, in Thurston county. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter for the purpose of securing any injunction as provided for in RCW 18.28.200: *Provided*, That after commencement of any action by a prosecuting attorney, as provided

therein, the attorney general may not accept an assurance of discontinuance without the consent of said prosecuting attorney. [1967 c 201 § 21.]

**18.28.220 Violation of injunction—Civil penalty.** Any person who violates any injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more than one thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1967 c 201 § 22.]

**18.28.900 Contracts prior to effective date not invalidated.** The provisions of this chapter shall not invalidate or make unlawful contracts between debt adjusters and debtors executed prior to the effective date of this chapter. [1967 c 201 § 23.]

**Effective date—1967 c 201:** June 8, 1967, see preface to 1967 session laws.

**18.28.910 Severability—1967 c 201.** If any provision of this act, or its application to any person or circumstance, is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected. [1967 c 201 § 24.]

## Chapter 18.29 DENTAL HYGIENIST

### Sections

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18.29.100	Violations—Penalty—Prosecutions.
18.29.900	Construction—1923 c 16.
18.29.910	Severability—1923 c 16.

**Reviser's note:** "director of licenses" changed to "director of motor vehicles" throughout certain sections of this chapter, as the department of licenses was abolished and its powers and duties have devolved to the department of motor vehicles. See note following Title 18 RCW digest.

*Dentistry: Chapter 18.32 RCW.*

*Rebating by practitioners of healing professions prohibited: Chapter 19.68 RCW.*

**18.29.005 "Surfaces of the teeth" defined.** The term "surfaces of the teeth" as used in this chapter means the portions of the crown and root surface to which there is no periodontal membrane attached. [1969 c 47 § 6.]

**18.29.010 License required.** No person shall practice as a dental hygienist in this state without having a license as such and after the first year an unexpired license renewal certificate. [1923 c 16 § 26; RRS § 10030-26.]

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**Persons practicing prior to act:** "Any citizen of this state who has been engaged in the practice of dental hygiene in this state under the direction of a licensed dentist for a period of not less than two years prior to the date when this act shall take effect, shall be entitled to a license as a dental hygienist under this act, upon filing his application within thirty days after this act shall take effect, paying a filing fee of ten dollars, furnishing proof of practice and citizenship by the affidavits of two licensed dentists and passing the practical tests provided for in section twenty-nine of this act." [1923 c 16 § 30.]

**18.29.020 Applications—Qualifications—Fee.** Any citizen of this state of good moral character who shall have attained the age of eighteen years may file his application for license as a dental hygienist in the manner provided by law on forms furnished by the director of motor vehicles and shall submit with said application proof of said applicant's graduation from a training school for dental hygienists. Said application shall be signed and sworn to by said applicant. Each applicant shall pay a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended which shall accompany his application. [1975 1st ex.s. c 30 § 24; 1971 ex.s. c 292 § 21; 1969 c 47 § 1; 1923 c 16 § 28; RRS § 10030-28.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**18.29.030 Examinations—Subjects—Grades.** Examination of applicant shall consist of written and practical tests and shall include the subjects of inorganic chemistry, physiology, anatomy, bacteriology, anesthesia, radiography, materia medica, dental histology, principles of nursing and hygiene, practical demonstration in hygiene, other kindred subjects contained in the curriculum of training schools for dental hygienists. Said written examination shall consist of ten questions only, graded from zero to ten on each subject and the applicant must obtain an average grade of sixty-five percent to pass. Said practical examination shall consist of a clinical demonstration upon one or more patients of the removal of deposits from and the polishing of the surfaces of the teeth, and the applicant must obtain an average grade of seventy-five percent to pass. The director of motor vehicles shall keep on file the examination papers and records of examinations for at least one year, which file shall be open to the inspection of the applicant or his agent. A certificate granted by the National Board of Dental Hygiene Examinations may be accepted in lieu of the written examination. [1969 c 47 § 2; 1923 c 16 § 29; RRS § 10030-29.]

**18.29.040 Reciprocal licenses—Fees.** Applicants licensed as dental hygienists under the laws of other states whose requirements are equal to those of this state and who have been engaged in the lawful practice of dental hygiene for a period of not less than three years in such state may, upon the payment of a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, be granted licenses as dental hygienists in this state without examination: *Provided, however,* That the privileges of this section shall be extended only to those states which extend to this state the same privilege. [1975 1st ex.s. c 30 § 25; 1969 c 47 § 3; 1923 c 16 § 33; RRS § 10030-33.]

**18.29.050 Scope of licensee's functions—Employment—Supervision.** Any person licensed as a dental hygienist in this state may remove deposits and stains from the surfaces of the teeth, may apply topical preventive or prophylactic agents, may polish and smooth restorations, may perform root planing and soft-tissue curettage, and may perform other dental operations and services delegated to them by a licensed dentist: *Provided however,* That licensed dental hygienists shall in no event perform the following dental operations or services:

- (1) Any surgical removal of tissue of the oral cavity;
- (2) Any prescription of drugs or medications requiring the written order or prescription of a licensed dentist or physician;
- (3) Any diagnosis for treatment or treatment planning; or
- (4) The taking of any impression of the teeth or jaw, or the relationships of the teeth or jaws, for the purpose of fabricating any intra-oral restoration, appliance, or prosthesis.

Such licensed dental hygienists may perform dental operations and services only under the supervision of a licensed dentist, and under such supervision may be employed by hospitals, boards of education of public or private schools, county boards, boards of health, or public or charitable institutions, or in dental offices: *Provided,* That the number of hygienists so employed in any dental office shall not exceed twice in number the licensed dentists practicing therein. [1971 ex.s. c 235 § 1; 1969 c 47 § 4; 1923 c 16 § 27; RRS § 10030-27.]

**18.29.060 License—Record—Display.** Upon passing an examination as provided in RCW 18.29.030 the director of motor vehicles shall issue to the successful applicant a license as dental hygienist, which said license shall be recorded in the office of the auditor of the county in which the licensee shall engage in practice and shall be displayed in a conspicuous place in the operation room where such licensee shall practice. [1923 c 16 § 31; RRS § 10030-31.]

**18.29.070 License renewal—Fee—Display.** Every person licensed as a dental hygienist shall pay on or before the first day of October of each year after a license is issued to him a license renewal fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended and the license renewal certificate which shall be thereupon issued by the director of motor vehicles shall be displayed with the license of said licensee. [1975 1st ex.s. c 30 § 26; 1969 c 47 § 5; 1923 c 16 § 32; RRS § 10030-32.]

**18.29.080 Practicing without license—Suspension—Penalty.** Any person other than a licensed dentist who shall practice or attempt to practice or hold himself out as practicing dental hygiene within this state without having at the time of so doing a valid unrevoked license and after the first year a valid and unexpired license renewal certificate as provided in this chapter, shall be guilty of a misdemeanor.

Any licensed dental hygienist who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor and may be punished either by fine or by a suspension of his license for a period of one year or by both such fine and suspension. [1923 c 16 § 34; RRS § 10030-34.]

**18.29.090 Permitting unlawful acts—Penalty.** Any licensed dentist who shall permit any dental hygienist operating under his supervision to perform any operation other than that permitted to dental hygienists under the provisions of this chapter, shall be guilty of a misdemeanor. [1923 c 16 § 35; RRS § 10030-35.]

*Similar provision in dentistry act: RCW 18.32.340.*

**18.29.100 Violations—Penalty—Prosecutions.** Any person who shall violate any provision of this chapter shall be guilty of a misdemeanor. It shall be the duty of the prosecuting attorney of each county to prosecute all cases involving a violation of this chapter arising within his county. The attorney general may assist in such prosecutions and shall appear at all hearings when requested to do so by the director of motor vehicles. [1923 c 16 § 36; RRS § 10030-36.]

**18.29.900 Construction—1923 c 16.** Words used in this chapter importing the singular number may also be applied to the plural of persons and things. Words importing the plural may be applied to the singular, and words importing the masculine gender may be extended to females also. [1923 c 16 § 37.]

*Number and gender: RCW 1.12.050.*

**18.29.910 Severability—1923 c 16.** Should any section of this chapter, or any portion of any section be for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. [1923 c 16 § 38.]

## Chapter 18.32 DENTISTRY *ADD*

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*Dental hygienists: Chapter 18.29 RCW.*

*Dentists, actions against, limitation of: RCW 4.16.350.*

*Lien of doctors: Chapter 60.44 RCW.*

*Rebating by practitioners of healing professions prohibited: Chapter 19.68 RCW.*

**18.32.010 Words defined.** Words used in the singular in this chapter may also be applied to the plural of the persons and things; words importing the plural may be applied to the singular; words importing the masculine gender may be extended to females also; the term "board" used in this chapter shall mean the Washington state board of dental examiners and the term "director" shall mean the director of licenses of the state of Washington. [1935 c 112 § 1; RRS § 10031-1.]

*For creation of board, appointment of members, etc.: RCW 18.32.035.*

**18.32.020 Practice of dentistry defined.** A person practices dentistry, within the meaning of this chapter, who (1) represents himself as being able to diagnose, treat, remove stains and concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, alveolar process, gums, or jaw, or (2) offers or undertakes by any means or methods to diagnose, treat, remove stains or concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the same, or take impressions of

the teeth or jaw, or (3) owns, maintains or operates an office for the practice of dentistry, or (4) engages in any of the practices included in the curricula of recognized and approved dental schools or colleges, or (5) professes to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth.

The fact that a person uses any dental degree, or designation, or any card, device, directory, poster, sign, or other media whereby he represents himself to be a dentist, shall be prima facie evidence that such person is engaged in the practice of dentistry.

X-ray diagnosis as to the method of dental practice in which the diagnosis and examination is made of the normal and abnormal structures, parts or functions of the human teeth, the alveolar process, maxilla, mandible or soft tissues adjacent thereto, is hereby declared to be the practice of dentistry. Any person other than a regularly licensed physician or surgeon who makes any diagnosis or interpretation or explanation, or attempts to diagnose or to make any interpretation or explanation of the registered shadow or shadows of any part of the human teeth, alveolar process, maxilla, mandible or soft tissues adjacent thereto by the use of x-ray is declared to be engaged in the practice of dentistry, medicine or surgery. [1957 c 98 § 1; 1957 c 52 § 20. Prior: (i) 1935 c 112 § 6; RRS § 10031-6. (ii) 1943 c 240 § 1; Rem. Supp. 1943 § 10031-6a.]

**18.32.030 Exemptions from statute.** The following practices, acts and operations are excepted from the operation of the provisions of this chapter:

(1) The rendering of dental relief in emergency cases in the practice of his profession by a physician or surgeon, licensed as such and registered under the laws of this state, unless he undertakes to or does reproduce lost parts of the human teeth in the mouth or to restore or to replace in the human mouth lost or missing teeth;

(2) The practice of dentistry in the discharge of official duties by dentists in the United States army, navy, public health service, veterans' bureau, or bureau of Indian affairs;

(3) Dental schools or colleges approved by the board, and the practice of dentistry by students in dental schools or colleges approved by the board, when acting under the direction and supervision of registered and licensed dentists acting as instructors;

(4) The practice of dentistry by licensed dentists of other states or countries while appearing as clinicians at meetings of the Washington state dental association, or component parts thereof, or at meetings sanctioned by them;

(5) The use of roentgen and other rays for making radiograms or similar records of dental or oral tissues, under the supervision of a licensed dentist or physician;

(6) The making, repairing, altering or supplying of artificial restorations, substitutions, appliances, or materials for the correction of disease, loss, deformity, malposition, dislocation, fracture, injury to the jaws, teeth, lips, gums, cheeks, palate, or associated tissues or parts;



providing the same are made, repaired, altered or supplied pursuant to the written instructions and order of a licensed dentist which may be accompanied by casts, models or impressions furnished by said dentist, and said prescriptions shall be retained and filed for a period of not less than three years and shall be available to and subject to the examination of the director of motor vehicles or his authorized representatives;

(7) The removal of deposits and stains from the surfaces of the teeth, the application of topical preventative or prophylactic agents, and the polishing and smoothing of restorations, when performed or prescribed by a dental hygienist licensed under the laws of this state;

(8) A qualified and licensed physician and surgeon extracting teeth or performing oral surgery;

(9) A legal practitioner of another state making a clinical demonstration before a medical or dental society, or at a convention approved by the Washington state medical or dental association or Washington progressive dental society;

(10) Students practicing or performing dental operations, under the supervision of competent instructors, in any reputable dental college;

(11) The performing of dental operations or services by persons not licensed under this chapter when performed under the supervision of a licensed dentist: *Provided however*, That such nonlicensed person shall in no event perform the following dental operations or services unless permitted to be performed by him under other provisions of this chapter or chapter 18.29 RCW:

(a) Any removal of or addition to the hard or soft tissue of the oral cavity;

(b) Any diagnosis of or prescription for treatment of disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws, or adjacent structure;

(c) Any administration of general or injected local anaesthetic of any nature in connection with a dental operation;

(d) Any oral prophylaxis;

(e) The taking of any impressions of the teeth or jaw or the relationships of the teeth or jaws, for the purpose of fabricating any intra-oral restoration, appliance, or prosthesis. [1971 ex.s. c 236 § 1; 1969 c 47 § 7; 1957 c 52 § 21; 1953 c 93 § 1; 1951 c 130 § 1. Prior: (i) 1941 c 92 § 3; 1935 c 112 § 25; Rem. Supp. 1941 § 10031-25; prior: 1923 c 16 § 23. (ii) 1935 c 112 § 6; RRS § 10031-6; prior: 1923 c 16 § 1; 1901 c 152 § 5; 1893 c 55 § 11.]

**18.32.035 Board of dental examiners—Creation—Membership—Terms—Powers—Vacancies.** There shall be a board of dental examiners consisting of nine practicing dentists, to be known as the Washington state board of dental examiners.

The members shall be appointed by the governor in the manner hereinafter set forth and at the time of their appointment upon said board must be actual residents of the state in active practice of dentistry or dental surgery as hereinafter defined and must have been for a period of five years or more legally licensed to practice dentistry or dental surgery in this state: *Provided, however*,

That no person shall be eligible to appointment to said board who is in any way connected with or interested in any dental college or dental department of any institution of learning. Those members serving on the board on March 27, 1975 shall continue to hold office for the following terms: The terms of the two board members appointed in 1972 shall expire July 1, 1975; the terms of the two board members appointed in 1973 shall expire July 1, 1976, and the term of the board member appointed in 1974 shall expire July 1, 1977. Six members shall be appointed to the board and shall take office July 1, 1975: two members to serve a term of three years, two members to serve a term of four years and two members to serve a term of five years. The term of office of each such member shall be designated by the governor in his appointment. Thereafter, all members shall be appointed to the board to serve for terms of five years from July 1 of the year in which they are appointed.

In case of a vacancy occurring on said board, such vacancy shall be filled by the governor as herein provided for the remainder of the term of the vacancy.

The board shall have the power to employ competent persons on a temporary basis to assist in conducting examinations for licensure. [1975 c 49 § 1; 1953 c 93 § 2; 1941 c 92 § 1; 1935 c 112 § 2; Rem. Supp. 1941 § 10031-2. Formerly RCW 43.68.010.]

**18.32.037 Board of dental examiners—Officers—Meetings—Quorum.** The board shall choose one of its members president and one secretary thereof, and it shall meet at least once in each year, and oftener if necessary, in the discretion of the director or board, and at such times and places as he or it may deem proper. A majority of the members of said board shall, at all times, constitute a quorum for the transaction of the business of the board, and the proceedings thereof shall, at all reasonable times, be open to public inspection. [1935 c 112 § 3; RRS § 10031-3. Formerly RCW 43.68.020.]

**18.32.040 Rules and regulations—Minimum credits—Examinations—Certificates.** Said board shall make rules and regulations to establish a uniform and reasonable standard of educational requirements to be observed by dental schools, colleges, or dental departments of universities, and said board may determine the reputability of these by reference to their compliance with said rules or regulations.

The board shall demand that every applicant for a license to practice dentistry shall:

(1) Be a graduate or have fifteen units of high school work in acceptable subjects from a high or other secondary school approved by the board.

(2) Present satisfactory evidence of completion of dental and dental education under one of the following plans:

(a) Completion of a minimum of thirty semester hours of collegiate credit in acceptable subjects from a college or university approved by the board, and graduation from a dental college, school, or dental department of an



institution requiring four courses of instruction of at least eight months each, approved by the board.

(b) Completion of a minimum of sixty semester hours of collegiate credit in acceptable subjects from a college or university approved by the board, and graduation from a dental school, college, or dental department of an institution requiring three courses of at least eight months each, approved by the board.

(3) Submit, for the files of the board, a recent picture duly identified and attested.

(4) Pass an examination given by the board of dental examiners in the theory and practice of the science of dentistry: *Provided*, That the board may recognize a certificate granted by the national board of dental examiners in lieu of, or subject to, such examination as may be required: *Provided, however*, That nothing in this chapter shall be construed to prevent any dental school which may desire to do so from establishing for admission a higher standard of preliminary education than specified in this chapter. [1935 c 112 § 5; RRS § 10031-5. Prior: 1923 c 16 §§ 4, 5. Formerly RCW 18.32.040 and 18.32.130 through 18.32.150.]

**18.32.050 Board—Members' compensation.** The members of the board shall each receive as compensation the sum of twenty-five dollars for each day actually engaged in the duties of the office, and travel expenses incurred in attending the meetings of the board in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 34; 1967 c 188 § 2; 1957 c 52 § 23; 1953 c 93 § 3. Prior: 1935 c 112 § 11, part; RRS § 10031-11, part.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.32.060 Board—Annual report to governor.** The board shall make an annual report of its proceedings to the governor by the fifteenth day of December of each year, together with an account of all moneys received and disbursed by it. [1957 c 52 § 24. Prior: 1935 c 112 § 11, part; RRS § 10031-11, part.]

**18.32.070 Director—Annual list of licensed dentists.** It shall be the duty of the director as soon as practicable after the first of each calendar year to furnish without charge to the secretary of the Washington state board of dental examiners a list of persons authorized to practice under this chapter. [1935 c 112 § 21; RRS § 10031-21.]

**18.32.080 Enforcement provisions—Certificate of director or county auditor as evidence.** The said director is charged with the duty of enforcing this chapter and it shall be the duty of any prosecuting attorney on the complaint of the director or the board or of any member thereof to prosecute any violation of this chapter. The certificate of the county auditor of the county in which any such proceeding shall be pending and/or the certificate of said director of licenses certifying in substance to the facts shown of record in their respective offices, or of the facts that no license required by this chapter has been issued, registered or renewed, shall be prima facie

evidence in such proceeding of the truth of such certificate. [1935 c 112 § 22; RRS § 10031-22. Formerly RCW 18.32.080 and 18.32.370.]

**18.32.085 Director—Supervision of records.** The director of licenses shall have the power and it shall be his duty to:

(1) Require licensed dentists to keep and maintain a copy of each laboratory referral instruction, describing detailed services rendered, for a period to be determined by the director but not more than three years, and to require the production of all such records for examination by the director of licenses or his authorized representatives; and

(2) Promulgate reasonable rules and regulations requiring licensed dentists to make, maintain and produce for examination by the director of licenses or his authorized representatives such other records as may be reasonable and proper in the performance of his duties and enforcing the provisions of this chapter. [1953 c 93 § 8.]

**18.32.090 Licensing required.** No person, unless previously registered or licensed to practice dentistry in this state, shall begin the practice of dentistry or dental surgery, or any branches thereof, without first applying to, and obtaining a license therefor from the director. [1957 c 52 § 27. Prior: 1941 c 92 § 2, part; 1935 c 112 § 4; Rem. Supp. 1941 § 10031-4, part.]

**18.32.100 Application—Contents—Citizenship.** The applicant for a dentistry license shall file an application on a form furnished by the director, and therein state his name, age, place of residence, citizenship, the name of the school or schools attended by him, the period of such attendance, the date of his graduation, whether he has ever been suspended or disbarred from the practice of dentistry, and shall include a statement of all of his dental activities for the previous five years.

The application shall be signed by the applicant and sworn to by him before some person authorized to administer oaths, and shall be accompanied by testimonials of his moral character, and proof of his school attendance and graduation.

Said applicant at the time of making application must, in addition to other requisites, be a citizen of the United States or have first papers for naturalization. [1957 c 52 § 28; 1953 c 93 § 4; 1951 c 130 § 2; 1941 c 92 § 2; 1935 c 112 § 4; Rem. Supp. 1941 § 10031-4, part. Prior: 1923 c 16 §§ 2, 3, 6, 7; 1901 c 152 § 1; 1893 c 55 § 4.]

**18.32.110 Application fee—Investigation fee.** Except as otherwise provided in RCW 18.32.210, as now or hereafter amended each applicant shall pay a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, which shall accompany his application: *Provided*, That applicants not licensed in another state and not residents of this state for at least six consecutive months shall pay an additional investigation fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. [1975 1st ex.s. c 30 § 27; 1969 c 49 § 1; 1957

c 52 § 29. Prior: 1941 c 92 § 2, part; 1935 c 112 § 4; Rem. Supp. 1941 § 10031-4, part.]

**18.32.120 Examination requirements—Fee.** When the application and the accompanying proof are found satisfactory, the director shall notify the applicant to appear before the board at a time and place to be fixed by the director, which time shall be not less than sixty days after the receipt of such application by the director.

Examination shall be made in writing in all theoretic subjects. Both theoretic and practical examinations shall be of a character to give a fair test of the qualifications of the applicant to practice dentistry or dental surgery.

The examination papers, and all grading thereon, and the grading of the practical work, shall be deemed public documents, and preserved for a period of not less than three years after the board has made and published its decisions thereon. All examinations shall be conducted by the board under fair and wholly impartial methods.

Any applicant who fails to make the required grade in his first examination is entitled to take as many subsequent examinations as he desires upon the prepayment of a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended for each subsequent examination. At least two examinations shall be given in each calendar year. [1975 1st ex.s. c 30 § 28; 1969 c 49 § 2; 1957 c 52 § 30; 1953 c 93 § 5. Prior: 1941 c 92 § 2, part; 1935 c 112 § 4, part; Rem. Supp. 1941 § 10031-4, part.]

**18.32.160 Licenses—Issue—Conditional as to full citizenship.** All licenses issued by the director shall be signed by him and by all members of the board; provided that all licenses issued to applicants who are not naturalized citizens of the United States shall be conditioned upon full citizenship being acquired within a period of six years from issuance of said licenses, and any holder failing to so qualify shall not be eligible for renewal of his license until full citizenship is acquired. This limitation shall not apply to dentists fully registered and licensed at the effective date of this act. [1951 c 130 § 3; 1935 c 112 § 17; RRS § 10031-17.]

**Reviser's note:** The effective date of 1951 c 130 is midnight, June 6, 1951; see preface to 1951 session laws.

**18.32.170 Licenses—Duplicate—Fee.** A fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended shall be charged for every duplicate license issued by the director. [1975 1st ex.s. c 30 § 29; 1957 c 52 § 25. Prior: 1935 c 112 § 11, part; RRS § 10031-11, part.]

**18.32.180 Licenses—Annual renewal fee—Forfeiture and reinstatement.** Every person granted a license under this chapter shall pay to the director a license renewal fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended for the year commencing with the first day of October next following the issuance of his license, and annually thereafter. Payment must be made within thirty days following the commencement of the year for which the same accrues. The license renewal certificate issued by the

director shall be indispensable evidence that the same has been made.

The failure of any licensed dentist to pay his annual license renewal fee by the first day of November following the date on which the fee was due shall work a forfeiture of his license. It shall not be reinstated except upon written application and the payment of a penalty determined by the director as provided in RCW 43.24.085 as now or hereafter amended, together with all annual license renewal fees delinquent at the time of the forfeiture, and those for each year thereafter up to the time of reinstatement. [1975 1st ex.s. c 30 § 30; 1969 c 49 § 3; 1951 c 130 § 4; 1935 c 112 § 24; RRS § 10031-24.]

**18.32.190 Licenses—Registration with county auditors—Display—Notification of address.** Any person licensed to practice dentistry in this state by the director as hereinbefore provided, shall, personally, and within ninety days from the date of issue, cause such license to be registered with the county auditor of such county or counties in which such person desires to or shall engage in the practice of dentistry, and the county auditors of the several counties of this state shall charge for registering such license a fee of fifty cents for each registration: *And it is hereby provided, further,* That every person who engages in the practice of dentistry in this state shall cause his or her license to be registered with the county auditor before beginning the practice of dentistry in said county, and to be, at all times, displayed in a conspicuous place, in his or her office wherein he or she shall practice such profession, and shall further, whenever requested, exhibit such license to any of the members of said board, or its authorized agent, and to the director or his authorized agent: *And it is further provided,* That every licensee shall notify the director of the address or addresses, and of every change thereof, where the licensee shall engage in the practice of dentistry. [1935 c 112 § 7; RRS § 10031-7. Prior: 1923 c 16 § 15; 1893 c 55 § 5.]

**18.32.200 Licenses—Registration in counties—Failure—Penalty.** Any failure, neglect, or refusal on the part of any person obtaining a license to practice dentistry from the said director, to register such license with the county auditor of some county in this state, within ninety days from the date of issue of the same or to notify the director of any change of address within ninety days thereof, as above directed, shall work a forfeiture of such license, and no license when once forfeited shall be restored, except upon payment to the said director of the sum determined by the director as provided in RCW 43.24.085 as now or hereafter amended for such neglect, failure, or refusal to register such license, and the surrender of forfeited license. [1975 1st ex.s. c 30 § 31; 1935 c 112 § 10; RRS § 10031-10. Prior: 1923 c 16 § 16.]

**18.32.210 Reciprocity with other states—Incoming dentists.** Any dentist who has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dentistry or

dental surgery which in the opinion of the board is equal to that at the time maintained in this state, and who has been lawfully and continuously engaged in the practice of dentistry for five years or more immediately before filing his application to practice in this state and who shall deposit in person with the director a duly attested certificate from the examining board of the state or territory in which he is registered, certifying to the fact of his registration and of his being a person of good moral character and of professional attainments, may, upon the payment of a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended and after satisfactory practical examination demonstrating his proficiency, be granted a license to practice dentistry in this state, without being required to take an examination in theory: *Provided, however,* That no license shall be issued to any such applicant, unless the state or territory from which such certificate has been granted to such applicant shall have extended a like privilege to engage in the practice of dentistry within its own borders to dentists heretofore and hereafter licensed by this state, and removing to such other state: *And provided further,* That the Washington state board of dental examiners shall have power to enter into reciprocal relations with similar boards of other states whose laws are practically identical with the provisions of this chapter. [1975 1st ex.s. c 30 § 32; 1969 c 49 § 4; 1935 c 112 § 13; RRS § 10031-13.]

**18.32.220 Certificate available for dentists going out-of-state.** Any one who is a legal and competent practitioner of dentistry or dental surgery in the state of Washington, and of good moral character and known to the board of dental examiners of this state as such, who desires to change his or her residence to another state or territory, shall, upon application to the board of dental examiners, receive a certificate over the signature of the president and secretary of said board, which shall attest the facts above mentioned, and giving the date upon which he was registered and licensed. [1935 c 112 § 14; RRS § 10031-14. FORMER PART OF SECTION: 1935 c 112 § 15; RRS § 10031-15, now codified as RCW 18.32.225.]

**18.32.225 Certificate available for dentists going out-of-state—Fee for issuance.** The fee for issuing a certificate to a legal practitioner of this state under RCW 18.32.220 shall be determined by the director as provided in RCW 43.24.085 as now or hereafter amended and in each case the fee shall be paid to the director before the certificate shall be issued. [1975 1st ex.s. c 30 § 33; 1935 c 112 § 15; RRS § 10031-15. Formerly RCW 18.32.220, part.]

**18.32.230 Refusal, revocation and suspension of licenses.** The director may refuse to issue the license provided for in this chapter, and any license now in force or that shall be hereafter given may be revoked or suspended, if issued to an individual who has, by false or fraudulent representations, obtained or sought to obtain practice, or, by false or fraudulent representations obtained or sought to obtain money or any other thing of

value, or for any other improper, unprofessional, or dishonorable conduct in the practice of dentistry, or is convicted of a felony, or when the licensee is found guilty of any of the following acts or offenses:

- (1) Fraud in procuring license.
- (2) Habitual intoxication or addiction to the use of drugs.
- (3) Willful or repeated violations of lawful rules established by any health officer of the state or any municipal corporation or division thereof.
- (4) Division of fees or agreeing to split or divide the fees received for dental services with any person for bringing or referring a patient, or assisting in the care or treatment of a patient without the knowledge of said patient or his legal representative.
- (5) Employing, procuring, inducing, aiding or abetting a person not licensed or registered as a dentist to engage in the practice of dentistry: *Provided,* That the person practiced upon shall not be deemed an accomplice, employer, procurer, inducer, aider, or abettor within the meaning of this chapter.
- (6) Making any misrepresentation or false promises, directly or indirectly to influence, persuade, or induce dental patronage.
- (7) Professional connection or association with, or lending his name to another for the illegal practice of dentistry by another, or professional connection or association with any person, firm, or corporation holding himself, themselves, or itself out in any manner contrary to this chapter. [1935 c 112 § 8; RRS § 10031-8.]

*Narcotics: Chapter 69.32 RCW.*

**18.32.240 Refusal, revocation and suspension of licenses—Notice, place of hearing.** In all proceedings for the revocation or suspension of a license, the holder of the license shall be given twenty days' notice in writing by the director. The notice shall specify the offenses with which the accused person is charged, and shall also give the day and place where the hearing is to be held. The hearing shall be held in the city of Olympia, unless a different place is fixed by the director. [1957 c 52 § 32. Prior: 1935 c 112 § 9, part; RRS § 10031-9, part.]

**18.32.250 Refusal, revocation and suspension of licenses—Subpoenas, evidence.** The director may issue subpoenas to compel the attendance of witnesses, or the production of books or documents. The accused shall have opportunity to make his defense, and may have such subpoenas issued as he desires. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath which may be administered by the director. Testimony shall be taken in writing, and may be taken by deposition under such rules as the director may prescribe. [1957 c 52 § 33. Prior: 1935 c 112 § 9, part; RRS § 10031-9, part.]

**18.32.260 Refusal, revocation and suspension of licenses—Conduct of hearings—Findings.** The committee appointed for that purpose shall hear and determine the charges, make findings and conclusions upon the evidence produced, and file them in the director's office, together with a transcript of all of the evidence,

and serve upon the accused a copy of such findings and conclusions. [1957 c 52 § 34; 1953 c 93 § 6. Prior: 1935 c 112 § 9, part; RRS § 10031-9, part.]

**18.32.270 Refusal, revocation and suspension of licenses—Director's order—Appeal to superior court.** The revocation or suspension of a license shall be in writing signed by the director, stating the grounds upon which such order is based and the aggrieved person shall have the right to appeal from such order within fifteen days after a copy thereof is served upon him, to the superior court of Thurston county, which shall hear the matter de novo. In such appeal the entire record shall be certified by the director to the court, and the review on appeal shall be confined to the evidence adduced at the hearing before the director. [1957 c 52 § 35. Prior: 1935 c 112 § 9, part; RRS § 10031-9, part.]

**18.32.280 Refusal, revocation and suspension of licenses—Appeal to supreme court or court of appeals.** An appeal shall lie to the supreme court or the court of appeals from the judgment of the superior court as provided in other civil cases. [1971 c 81 § 59; 1957 c 52 § 36. Prior: 1935 c 112 § 9, part; RRS § 10031-9, part.]

**18.32.290 Advertising—False—Credit terms.** It shall be unlawful for any person, firm or corporation to publish, directly or indirectly, or circulate any fraudulent, false or misleading statements within the state of Washington as to the skill or method of practice of any person or operator; or in any way to advertise in print any matter with a view of deceiving the public, or in any way that will tend to deceive or defraud the public; or to claim superiority over neighboring dental practitioners; or to publish reports of cases or certificates of same in any public advertising media; or to advertise as using any anesthetic, drug, formula, medicine, which is either falsely advertised or misnamed; or to advertise any amount as a price or fee for the service or services of any person engaged as principal or agent in the practice of dentistry, or for any material or materials whatsoever used or to be used, or to employ "capper" or "steerers" to obtain patronage; or to give a public demonstration of skill or methods of practicing dentistry upon or along the streets or highways; and any person committing any offense against any of the provisions of this section shall, upon conviction, be subjected to such penalties as are provided in this chapter: *Provided*, That any person licensed under this chapter may announce credit, terms of credit or installment payments that may be made at periodical intervals to apply on account of any dental service rendered: *And provided further*, That any person licensed under this chapter shall not advertise any specific amount of credit, terms of credit or installment payments that may be made at periodical intervals to apply on account of any dental service rendered. [1935 c 112 § 20; RRS § 10031-20.]

*False advertising: RCW 9.04.010.*

**18.32.300 Forged or fraudulent diplomas, licenses, identification certificates—Penalty.** Any person filing or attempting to file, as his own, the diploma or license

of another or a forged affidavit of identification or qualification, shall be deemed guilty of a felony, and, upon conviction thereof, shall be subject to such fine and imprisonment as is made and provided by the statutes of this state for the crime of forgery. [1935 c 112 § 12; RRS § 10031-12.]

*Forgery: RCW 9A.60.020.*

**18.32.310 Practice or solicitation by corporations prohibited—Penalty.** No corporation shall practice dentistry or shall solicit through itself, or its agent, officers, employees, directors or trustees, dental patronage for any dentists or dental surgeon employed by any corporation: *Provided*, That nothing contained in this chapter shall prohibit a corporation from employing a dentist or dentists to render dental services to its employees: *Provided, further*, That such dental services shall be rendered at no cost or charge to the employees; nor shall it apply to corporations or associations in which the dental services were originated and are being conducted upon a purely charitable basis for the worthy poor, nor shall it apply to corporations or associations furnishing information or clerical services which can be furnished by persons not licensed to practice dentistry, to any person lawfully engaged in the practice of dentistry, when such dentist assumes full responsibility for such information and services. Any corporation violating the provisions of this section is guilty of a gross misdemeanor, and each day that this chapter is violated shall be considered a separate offense. [1935 c 112 § 19; RRS § 10031-19.]

**18.32.320 Prescriptions—Filled by druggists.** Registered pharmacists of this state may fill prescriptions of legally licensed dentists of this state for any drug necessary in the practice of dentistry. [1935 c 112 § 26; RRS § 10031-26. Prior: 1923 c 16 § 24.]

*Pharmacists: Chapter 18.64 RCW.*

**18.32.330 Sanitary regulations.** It shall be the duty of every person engaged in the practice of dentistry or who shall own, operate, or manage any dental office to keep said office and dental equipment in a thoroughly clean and sanitary condition. [1935 c 112 § 27; RRS § 10031-27. Prior: 1923 c 16 § 25.]

**18.32.340 Unlawful practice—Hygienists—Penalty.** Any licensed dentist who shall permit any dental hygienist operating under his supervision to perform any operation required to be performed by a dentist under the provisions of this chapter shall be guilty of a misdemeanor. [1935 c 112 § 28; RRS § 10031-28.]

*Similar provision in dental hygienist act: RCW 18.29.090.*

**18.32.350 Unlawful practice—Employing unlicensed dentist—Penalty.** No manager, proprietor, partnership, or association owning, operating, or controlling any room, office, or dental parlors, where dental work is done, provided, or contracted for, shall employ or retain any unlicensed person or dentist as an operator; nor shall fail, within ten days after demand made by the

director or board in writing sent by registered mail, addressed to any such manager, proprietor, partnership, or association at said room, office, or dental parlor, to furnish the director or board with the names and addresses of all persons practicing or assisting in the practice of dentistry in his place of business or under his control, together with a sworn statement showing by what license or authority said persons are practicing dentistry.

The sworn statement shall not be used as evidence in any subsequent court proceedings, except in a prosecution for perjury connected with its execution.

Any violation of the provisions of this section shall constitute improper, unprofessional, and dishonorable conduct; it shall also constitute grounds for injunction proceedings as provided by this chapter and in addition shall constitute a gross misdemeanor, except that the failure to furnish the information as may be requested in accordance with this section shall constitute a misdemeanor. [1957 c 52 § 38; 1953 c 93 § 7. Prior: 1937 c 45 § 1, part; 1935 c 112 § 18, part; RRS § 10031-18, part.]

*Injunctions: Chapter 7.40 RCW.*

*Perjury: Chapter 9A.72 RCW.*

**18.32.360 Unlawful practice—Names used—Advertising—Penalty.** It shall be unlawful for any person to practice dentistry under any name, except his own, which shall be that used in his license issued by the director: *Provided*, That this shall not apply to any person who was practicing dentistry in this state on March 20, 1935, under an association or trade name.

It shall be unlawful for any person to conduct a dental office in his name, or to advertise his name in connection with any dental offices, unless he is personally present therein operating as a dentist, or personally overseeing the operations performed in any office, during most of the time that that office is being operated: *Provided*, That this section shall not prohibit any person from continuing to conduct any offices legally conducted in this state on March 20, 1935.

Any violation of the provisions of this section shall constitute improper, unprofessional and dishonorable conduct; it shall also constitute grounds for injunction proceedings as provided by this chapter, and in addition shall constitute a gross misdemeanor. [1957 c 52 § 39. Prior: 1937 c 45 § 1, part; 1935 c 112 § 18, part; RRS § 10031-18, part.]

**18.32.380 Enforcement provisions—Injunctions.** The attorney general, each prosecuting attorney, the director, the state board of dental examiners, or any citizen of any county where any person shall engage in the practice of dentistry as herein defined without possessing a valid license so to do, may in accordance with the laws of this state governing injunctions, maintain an action in the name of this state to enjoin such person from engaging in the practice of dentistry as herein defined until a valid license to practice dentistry be secured: *Provided, however*, That such injunction shall not relieve such person so practicing dentistry without a valid license from criminal prosecution therefor, but such remedy by injunction shall be in addition to the liability of such

offender to criminal prosecution. [1935 c 112 § 23; RRS § 10031-23.]

*Injunctions: Chapter 7.40 RCW.*

**18.32.390 Penalty—General.** Any person who shall practice or offer to practice dentistry in this state without being registered or without a license for that purpose, or violates any of the provisions of the chapter for which no specific penalty has been provided herein, shall be subject to prosecution before any court of competent jurisdiction, and shall, upon conviction, be guilty of a gross misdemeanor. [1935 c 112 § 16; RRS § 10031-16. Prior: 1901 c 152 § 4; 1893 c 55 § 8.]

**18.32.400 Dentist members of committees to evaluate credentials and qualifications of dentists—Immunity from civil suit.** See RCW 4.24.240.

**18.32.410 Dentists filing charges or presenting evidence before dental society committee or board—Immunity from civil suit.** See RCW 4.24.250.

**18.32.420 Records of dental society committees or boards not subject to civil process.** See RCW 4.24.250.

**18.32.900 Severability—1935 c 112.** Should any section of this act for any reason be held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the act. [1935 c 112 § 29.]

**18.32.910 Severability—1953 c 93.** If any provision of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable. [1953 c 93 § 9.]

## Chapter 18.34 DISPENSING OPTICIANS

### Sections

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18.34.900	Severability—1957 c 43.

**18.34.010 Licensing—Exemptions—Limitations.** Nothing in this chapter shall:

(1) Be construed to limit or restrict a duly licensed physician or optometrist or employees working under the personal supervision of a duly licensed physician or

optometrist from the practices enumerated in this chapter, and each such licensed physician and optometrist shall have all the rights and privileges which may accrue under this chapter to dispensing opticians licensed hereunder;

(2) Be construed to prohibit an unlicensed person from performing mechanical work upon inert matter in an optical office, laboratory or shop;

(3) Be construed to prohibit an unlicensed person from engaging in the sale of spectacles, eyeglasses, magnifying glasses, goggles, sunglasses, telescopes, binoculars, or any such articles which are completely preassembled and sold only as merchandise;

(4) Be construed to authorize or permit a licensee hereunder to hold himself out as being able to, or to offer to, or to undertake to attempt, by any manner of means, to examine or exercise eyes, diagnose, treat, correct, relieve, operate or prescribe for any human ailment, deficiency, deformity, disease or injury. [1957 c 43 § 1.]

**18.34.020 Definitions.** The term "director" wherever used in this chapter shall mean the director of licenses of the state of Washington. The term "apprentice" wherever used in this chapter shall mean a person who shall be designated an apprentice in the records of the director at the request of a physician, registered optometrist or licensee hereunder, and who shall thereafter receive from such physician, registered optometrist or licensee hereunder training and direct supervision in the work of a dispensing optician. [1957 c 43 § 2.]

**Reviser's note:** The powers and duties of the director of licenses have devolved to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest.

**18.34.030 Apprentices.** No licensee hereunder may have more than two apprentices in training at one time: *Provided*, That the licensee shall be responsible for the acts of his apprentices in the performance of their work in the apprenticeship program: *Provided further*, That apprentices shall complete their apprenticeship in six years and shall not work longer as an apprentice unless the director determines, after a hearing, that the apprentice was prevented by causes beyond his control from completing his apprenticeship and becoming a licensee hereunder in six years. [1957 c 43 § 3.]

**18.34.040 Administration of chapter.** This chapter shall be administered under and pursuant to the administrative code of the state of Washington contained in chapter 7, Laws of 1921 and chapter 43.24 RCW, as amended from time to time. [1957 c 43 § 4.]

**18.34.050 Examining committee.** The examining committee shall consist of three persons primarily engaged in the business of dispensing opticians and who currently hold a valid license under this chapter. [1957 c 43 § 5.]

**18.34.060 Dispensing optician.** A dispensing optician is a person who prepares duplications of, or prepares and

dispenses lenses, spectacles, eyeglasses and/or appurtenances thereto to the intended wearers thereof on written prescriptions from physicians or optometrists, and in accordance with such prescriptions, measures, adapts, adjusts and fabricates such lenses, spectacles, eyeglasses and/or appurtenances thereto to the human face for the aid or correction of visual or ocular anomalies of the human eye: *Provided, however*, That contact lenses may be fitted only upon a written prescription of a physician or optometrist. [1957 c 43 § 6.]

**18.34.070 Applicants—Eligibility for examination—Fee.** Any applicant for a license shall be examined if he pays an examination fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended and certifies under oath that:

- (1) He is eighteen years or more of age; and
- (2) He has graduated from an accredited high school; and
- (3) He is a citizen of the United States or has declared his intention of becoming such citizen in accordance with law; and
- (4) He is of good moral character; and
- (5) He has either:
  - (a) Had at least three years of apprenticeship training; or
  - (b) Successfully completed a prescribed course in opticianry in a college or university approved by the director; or
  - (c) Been principally engaged in practicing as a dispensing optician not in the state of Washington for five years. [1975 1st ex.s. c 30 § 34; 1971 ex.s. c 292 § 22; 1957 c 43 § 7.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**18.34.080 Examination—Issuance and display of license.** The examination shall determine whether the applicant has a thorough knowledge of the principles governing the practice of a dispensing optician which is hereby declared necessary for the protection of the public health. The director shall license successful examinees and the license shall be conspicuously displayed in the place of business of the licensee. [1957 c 43 § 8.]

**18.34.090 Revocation or suspension of licenses—Grounds.** A license may be suspended or revoked when a licensee:

- (1) Has been convicted of a felony involving moral turpitude; or
- (2) Is addicted to the use of alcohol or any drug; or
- (3) Has used advertising, whether printed, radio, display, or of any other nature, which is fraudulent, misleading or inaccurate in any material particular, or misrepresents in any way any goods, services, or credit terms, values, policies, services or the nature or form of the business conducted; or
- (4) Has practiced fraud or deception in his application for or in his examination for license; or
- (5) Has used the word "licensed," "registered," or any of their synonyms publicly, except as provided in RCW 18.34.080; or



(6) Has displayed or published, directly or indirectly by any means, a price, terms of payment, or a discount or a policy or practice of generally underselling competitors, or any reference to the benefits available to the subscribers to any prepaid health plan; or

(7) Has participated in the division, assignment, rebate or refund of fees to a physician or optometrist in consideration of patient referrals; or

(8) Has bartered or given away as premiums in any manner either on his own account or as agent or representative for any other person, firm or corporation, any eyeglasses, spectacles, lenses or frames; or

(9) Has advertised the "free examinations of eyes," "free consultation," "consultation without obligation," "free advice," or any words or phrases of similar import which convey the impression to the public that eyes are examined free or of a character tending to deceive or mislead the public, or in the nature of "bait advertising"; or

(10) Has employed either directly or indirectly, any person commonly known as "cappers" or "steerers" to obtain business; or

(11) Has solicited, or employed any person to solicit from house to house; or

(12) Has used advertising offering a service to the public for which he is not licensed hereunder: *Provided*, That nothing in this section shall prohibit the optician from advertising merchandise for which the license which is the subject of this chapter is not required; or

(13) Has engaged in a group contract for the duplication of eyeglasses or spectacles without a written prescription from an optometrist or physician; or

(14) Has advertised the services of any other segment of the healing arts; or

(15) Has violated subsections (10) to (17) [(15)] inclusive of RCW 18.53.140. [1957 c 43 § 9.]

**18.34.100 Revocation or suspension of licenses—Reissuance and reinstatement.** The director, after a hearing, may for good cause reissue or reinstate the license of a person whose license has been revoked or suspended. [1957 c 43 § 10.]

**18.34.110 Existing practitioner—Fee.** The director shall issue a license without examination to any person who makes application therefor within six months after the effective date of this chapter, pays a fee of fifty dollars and certifies under oath that he is of good moral character and has been actually and principally engaged in the practice of a dispensing optician in the state of Washington for a period of not less than six months immediately preceding the effective date of this chapter. [1957 c 43 § 11.]

**Reviser's note:** The effective date of this chapter was midnight, June 12, 1957; see preface to 1957 session laws.

**18.34.120 Annual renewal—Fee—Reinstatement—Penalty.** Each licensee hereunder shall pay an annual renewal registration fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, on or before the first day of July of each year, and thereupon the license of such person shall be

renewed for a period of one year. Any failure to pay the annual renewal registration fee shall render the license invalid, but such license shall be reinstated upon written application therefor to the director and payment of a penalty determined by the director as provided in RCW 43.24.085 as now or hereafter amended, together with all delinquent annual license renewal fees. [1975 1st ex.s. c 30 § 35; 1957 c 43 § 12.]

**18.34.130 Opticians' account created—Disposition of fees.** There is created the opticians' account of the general fund. All fees required to be paid under the provisions of this chapter shall be paid to the state treasurer to be paid into the opticians' account of the general fund. [1957 c 43 § 13.]

**18.34.140 Practicing without license—Penalty.** It shall be a gross misdemeanor for any person to practice as a dispensing optician without a license or while his license is suspended or revoked. [1957 c 43 § 14.]

**18.34.150 Unlawful practice may be enjoined.** If any person engages in the practice of a dispensing optician without possessing a valid license to do so, or if he violates the provisions of RCW 18.34.090, the attorney general, any prosecuting attorney, the director, or any citizen of the same county may maintain an action in the name of the state of Washington to enjoin such person from engaging in practice as a dispensing optician. The injunction shall not relieve from criminal prosecution, but the remedy by injunction shall be in addition to the liability of such offender to criminal prosecution and to suspension or revocation of his license. [1957 c 43 § 15.]

**18.34.900 Severability—1957 c 43.** If any provisions of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1957 c 43 § 16.]

## Chapter 18.35 HEARING AIDS

### Sections

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18.35.160	Council on hearing aids—Powers and duties.
18.35.170	Council on hearing aids—Restriction upon member taking examination.



- 18.35.180 Application of Consumer Protection Act and False Advertising Act.  
 18.35.190 Valid license prerequisite to suits—Violations—Rescission of transactions—Scope of chapter.  
 18.35.200 Other laws unaffected.  
 18.35.900 Severability—1973 1st ex.s. c 106.

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

(1) "Department" means the department of motor vehicles.

(2) "Council" means the council on hearing aids.

(3) "Hearing aid" means any wearable prosthetic instrument or device designed for or represented as aiding, improving, compensating for, or correcting defective human hearing and any parts, attachments, or accessories of such an instrument or device, excluding batteries and cords and ear molds.

(4) "Fitting and dispensing of hearing aids" means the sale, lease, or rental or attempted sale, lease, or rental of hearing aids together with the selection and adaptation of hearing aids and the use of those tests and procedures essential to the performance of these functions. It includes the taking of impressions for ear molds for these purposes. [1973 1st ex.s. c 106 § 1.]

**18.35.020 License—Required.** No person shall engage in the fitting and dispensing of hearing aids unless he holds a valid license issued by the department as provided in this chapter. [1973 1st ex.s. c 106 § 2.]

**18.35.030 Receipt required—Contents.** Any person who engages in the fitting and dispensing of hearing aids shall deliver to each person supplied with or sold a hearing aid a receipt which shall contain his signature and show the address of his regular place of business and the number of his license, together with a description of the hearing aid furnished, including the term "used" or "reconditioned" if applicable, amount charged therefor, and terms of sale. [1973 1st ex.s. c 106 § 3.]

**18.35.040 Applicants—Qualifications—Fee—Requirements.** An applicant for license shall be at least eighteen years of age, shall pay a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, and shall show to the satisfaction of the department that he is free of any infectious or contagious disease which would involve undue risk to the public. An applicant shall not be issued a license under the provisions of this chapter unless he:

(1) Satisfactorily completes the examination required by this chapter; or

(2) Has been engaged in the fitting and dispensing of hearing aids in the state of Washington for a period of six months immediately prior to July 16, 1973: *Provided*, That any person receiving a license under this section shall be required to complete and pass the examination by the date on which the names of those persons who have passed the third examination subsequent to July 16, 1973, are disclosed by the department; or

(3) Holds a current, unsuspended, unrevoked license or certificate from a state or jurisdiction with whom the

department has entered into a reciprocal agreement. [1975 1st ex.s. c 30 § 36; 1973 1st ex.s. c 106 § 4.]

**18.35.050 Examination—Required—When offered.** Except as otherwise provided in this chapter an applicant for license shall appear at a time and place and before such persons as the department may designate to be examined by written and practical tests. The department shall give an examination during the second full week in January and during the third full week in July each year. [1973 1st ex.s. c 106 § 5.]

**18.35.060 Trainee license—Qualifications—Requirements—Fee—Contents—Authority of trainee—Expiration—Reissuance.** (1) The department shall issue a trainee license to any applicant who has shown to the satisfaction of the department that:

(a) He is at least eighteen years of age;

(b) He is free of any infectious or contagious disease;

(c) If issued a trainee license, he would be employed and directly supervised in the fitting and dispensing of hearing aids by a person licensed under this chapter in a capacity other than trainee; and

(d) He has paid an application fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, to the department.

The provisions of RCW 18.35.030 and 18.35.110 through 18.35.130 shall apply to any person issued a trainee license. Pursuant to the provisions of this section, a person issued a trainee license may engage in the fitting and dispensing of hearing aids without having first passed the examination provided under this chapter.

(2) The trainee license shall contain the name of the person licensed under this chapter who is employing and supervising the trainee and an acknowledgment executed by such person that he is responsible for all acts of the trainee in connection with the fitting and dispensing of hearing aids.

(3) A trainee may fit and dispense hearing aids, but only if he is under the direction and supervision of a person licensed under this chapter in a capacity other than trainee.

(4) The trainee license shall expire one year from the date of its issuance except that at the discretion of the department on recommendation of the council the license may be reissued for one additional year only.

(5) No person licensed under this chapter may assume the responsibility for more than three trainees at any one time, unless approved in writing by the department. [1975 1st ex.s. c 30 § 37; 1973 1st ex.s. c 106 § 6.]

**18.35.070 Examination—Contents—Tests.** The examination provided in RCW 18.35.050 shall consist of:

(1) Tests of knowledge in the following areas as they pertain to the fitting of hearing aids:

(a) Basic physics of sound;

(b) The human hearing mechanism, including the science of hearing and the causes and rehabilitation of abnormal hearing and hearing disorders; and

(c) Structure and function of hearing aids.

(2) Tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:

(a) Pure tone audiometry, including air conduction testing and bone conduction testing;

(b) Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;

(c) Effective masking;

(d) Recording and evaluation of audiograms and speech audiometry to determine hearing aid candidacy;

(e) Selection and adaptation of hearing aids and testing of hearing aids; and

(f) Taking ear mold impressions.

(3) Evidence of knowledge regarding the medical and rehabilitation facilities for children and adults that are available in the area served.

(4) Evidence of knowledge of grounds for revocation or suspension of license under the provisions of this chapter.

(5) Any other tests as the department may by rule establish. [1973 1st ex.s. c 106 § 7.]

**18.35.080 License—Issuance—Fee—Duration.** The department shall license each applicant, without discrimination, who satisfactorily completes the required examination and, upon payment of a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended to the department, shall issue to the applicant a license. The license shall be effective until December 31st of the year in which it is issued. [1975 1st ex.s. c 30 § 38; 1973 1st ex.s. c 106 § 8.]

**18.35.090 Renewal fee—Display of license.** Each person who engages in the fitting and dispensing of hearing aids shall annually, on or before January 1st, pay to the department a fee of one hundred twenty-five dollars for a renewal of his license and shall keep such license conspicuously posted at his business address at all times. A thirty-day grace period shall be allowed after January 1st, during which licenses may be renewed on payment of a fee of one hundred fifty dollars to the department. The department may suspend the license of any person who fails to renew his license before the expiration of the thirty-day grace period. [1973 1st ex.s. c 106 § 9.]

**18.35.100 Place of business.** (1) A person who holds a license shall notify the department in writing of the regular address of the place or places in the state of Washington where he engages or intends to engage in the fitting and dispensing of hearing aids and of any change thereof within thirty days of such change. Failure to notify the department in writing shall be grounds for suspension or revocation of license.

(2) The department shall keep a record of the places of business of persons who hold licenses.

(3) Any notice required to be given by the department to a person who holds a license may be given by mailing it to him at the address of the last place of business of which he has notified the department, except that notice to a licensee of proceedings to deny, suspend, or revoke the license shall be by certified or registered mail or by

means authorized for service of process. [1973 1st ex.s. c 106 § 10.]

**18.35.110 Grounds for suspension of license.** Any person licensed under this chapter may have his license suspended for a fixed period or be placed on probation by the department for any of the following causes:

(1) The licensee, in the application for the license, or in any written or oral communication to the department concerning the issuance or retention of the license, has made any material misstatement of fact, or has omitted to disclose any material fact necessary to make that which is stated not misleading.

(2) For unethical conduct, or for gross incompetence in dealing in hearing aids. Unethical conduct shall include, but not be limited to:

(a) Using or causing or promoting the use of, in any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is false, misleading or deceptive;

(b) Employing directly or indirectly any suspended or unlicensed person to perform any work covered by this chapter;

(c) Failing or refusing to honor or to perform as represented any representation, promise, agreement or warranty in connection with the promotion, dispensing or fitting of the hearing aid;

(d) Advertising a particular model, type, or kind of hearing aid for sale which purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing and where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type, or kind than that advertised;

(e) (i) Whenever any of the following conditions are found or should have been found to exist either from observations by the licensee or on the basis of information furnished by the prospective hearing aid user, prior to fitting and dispensing a hearing aid to any such prospective hearing aid user, failing to advise that prospective hearing aid user in writing that he should first consult a licensed physician specializing in diseases of the ear or if no such licensed physician is available in the community then to any duly licensed physician:

(A) Visible congenital or traumatic deformity of the ear;

(B) History of, or active drainage from the ear within the previous ninety days;

(C) History of sudden or rapidly progressive hearing loss within the previous ninety days;

(D) Acute or chronic dizziness;

(E) Unilateral hearing loss of sudden or recent onset within ninety days;

(F) Significant air-bone gap (when generally acceptable standards have been established);

(G) Any other conditions that the department may by rule establish: *Provided*, That it shall be a violation of this subsection for any licensee or his employees and putative agents upon making such required referral for medical opinion to in any manner whatsoever disparage

or discourage a prospective hearing aid user from seeking such medical opinion prior to the fitting and dispensing of a hearing aid: *And provided further*, That no such referral for medical opinion need be made by any licensee in the instance of replacement only of a hearing aid which has been lost or damaged beyond repair within one year of the date of purchase: *And provided further*, That nothing in this section required to be performed by a licensee shall mean that the licensee is engaged in the diagnosis of illness or the practice of medicine or any other activity prohibited by the provisions of this code;

(ii) Fitting and dispensing a hearing aid to any person under eighteen years of age who has not been examined and cleared for hearing aid use within the previous six months by a physician specializing in otolaryngology except in the case of replacement instruments or except in the case of the parents or guardian of such person refusing, for good cause, to seek medical opinion: *Provided*, That should the parents or guardian of such person refuse, for good cause, to seek medical opinion, the licensee shall obtain from such parents or guardian a certificate to that effect in a form as prescribed by the department;

(iii) Fitting and dispensing a hearing aid to any person under eighteen years of age who has not been examined by a clinical audiologist for his recommendations during the previous six months, without first advising such person or his parents or guardian in writing that he should first consult a clinical audiologist;

(f) Representing that the services or advice of a person licensed to practice medicine and surgery under chapter 18.71 RCW or osteopathy and surgery under chapter 18.57 RCW or of a clinical audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true, or using the word "doctor", "clinic", or other like words, abbreviations, or symbols which tend to connote a medical or osteopathic profession when such use is not accurate; or

(g) Permitting another to use his license.

(3) Engaging in the fitting or dispensing of hearing aids while suffering from a contagious or infectious disease involving undue risk to the public.

(4) Dealing in hearing aids under a false, misleading, or deceptive name.

(5) For any violation of the provisions of this chapter.

(6) Failure to properly and reasonably accept responsibility for the actions of his employees.

(7) Engaging in any unfair or deceptive practice or unfair method of competition in trade within the meaning of RCW 19.86.020 as now or hereafter amended. [1973 1st ex.s. c 106 § 11.]

**18.35.120 Revocation of license.** A license may also be revoked for any of the grounds provided in RCW 18.35.110 when the department finds revocation is necessary to protect members of the public. [1973 1st ex.s. c 106 § 12.]

**18.35.130 Hearing.** Where the department proposes to refuse to issue or renew a license, or proposes to

revoke or suspend a license, opportunity for hearing shall be accorded pursuant to the Administrative Procedure Act, chapter 34.04 RCW. [1973 1st ex.s. c 106 § 13.]

**18.35.140 Powers and duties of department.** The powers and duties of the department, in addition to the powers and duties provided under other sections of this chapter, are as follows:

(1) To purchase and maintain or rent audiometric equipment and facilities necessary to carry out the examination of applicants for license.

(2) To authorize all disbursements necessary to carry out the provisions of this chapter.

(3) To require the periodic inspection of the audiometric testing equipment and to carry out the periodic inspection of facilities of persons who deal in hearing aids, as reasonably required within the discretion of the department.

(4) To establish by rule such minimum standards of equipment and procedures in the fitting and dispensing of hearing aids as deemed appropriate and in the public interest.

(5) To adopt in accordance with the procedures set forth in the Administrative Procedure Act, chapter 34.04 RCW, such rules and regulations not inconsistent with the laws of this state and the provisions of this chapter which are necessary to carry out the provisions of this chapter including but not limited to interpretation of the provisions of this chapter. [1973 1st ex.s. c 106 § 14.]

**18.35.150 Council on hearing aids—Created—Membership—Qualifications—Terms—Vacancies—Meetings—Travel expenses.** (1) There is created hereby the council on hearing aids. The council shall consist of seven members to be appointed by the governor.

(2) Members of the council shall be residents of this state. Four members shall be persons experienced in the fitting of hearing aids who shall hold valid licenses under this chapter. One member shall be a medical doctor specializing in otolaryngology. One member shall be a clinical audiologist. One member shall represent the public.

(3) The term of office of a member is three years, except that on the first council three members shall serve for two years and four members shall serve for three years. A member shall continue to serve until a successor has been appointed and qualifies. Before a member's term expires, the governor shall appoint a successor to assume his duties at the expiration of his predecessor's term. A vacancy in the office of a member shall be filled by appointment for the unexpired term.

(4) The chairman of the council shall be elected from the membership of the council at the beginning of each year.

(5) The council shall meet at least once each year, at a place, day and hour determined by the council, unless otherwise directed by a majority of council members. The council shall also meet at such other times and places as are requested by the department or by three members of the council.

(6) Members of the council shall not be compensated for their services, but shall be reimbursed for their travel expenses in accordance with RCW 43.03.050 and 43.03-.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 35; 1973 1st ex.s. c 106 § 15.]

**Effective date—Severability—**—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

**18.35.160 Council on hearing aids—Powers and duties.** (1) The council shall have the responsibility and duty of advising the department in matters relating to this chapter, subject to approval by the department shall prepare the examination required by this chapter, and shall assist the department in carrying out the provisions of this chapter.

(2) The department shall consider and be guided by the recommendations of the council pursuant to this section and in all matters of policy relating to this chapter.

(3) The council whenever possible shall recommend that the department enter into reciprocity of licensure agreements with those states having licensure requirements equivalent to or higher than those provided herein.

(4) The council shall have the responsibility and duty of advising the department and preparing specific recommendations concerning the minimum standards of equipment and procedures in the fitting and dispensing of hearing aids. [1973 1st ex.s. c 106 § 16.]

**18.35.170 Council on hearing aids—Restriction upon member taking examination.** A member of the council on hearing aids shall not be permitted to take the examination provided under this chapter unless he has first satisfied the department that adequate precautions have been taken to assure that he does not and will not have any knowledge, not available to the members of the public at large, as to the contents of the examination. [1973 1st ex.s. c 106 § 17.]

**18.35.180 Application of Consumer Protection Act and False Advertising Act.** Acts and practices in the course of trade in the promoting, advertising, selling, fitting and dispensing of hearing aids shall be subject to the provisions of chapter 19.86 RCW (Consumer Protection Act) and RCW 9.04.050 (False Advertising Act) and any violation of the provisions of this chapter shall constitute violation of RCW 19.86.020. [1973 1st ex.s. c 106 § 18.]

**18.35.190 Valid license prerequisite to suits—Violations—Rescission of transactions—Scope of chapter.** (1) In addition to remedies otherwise provided by law, in any action brought by or on behalf of a person required to be licensed hereunder, or by any assignee or transferee thereof, arising out of the business of fitting and dispensing of hearing aids, it shall be necessary to allege and prove that the licensee at the time of the transaction held a valid license as required by this chapter, and that such license has not been suspended or revoked pursuant to RCW 18.35.110 and 18.35.120.

(2) Any person who shall engage in the fitting and dispensing of hearing aids without having obtained a license or who shall wilfully and intentionally violate any of the provisions of this chapter shall be guilty of a gross misdemeanor.

(3) In addition to any other rights and remedies he may have, the purchaser of a hearing aid shall have the right to rescind the transaction for other than the seller's breach if:

(a) The purchaser for whatever reason consults a licensed physician subsequent to purchasing the hearing aid; and

(b) Such licensed physician advises such purchaser against purchasing or using a hearing aid and in writing specifies the medical reasons for such advice; and

(c) The purchaser returns the hearing aid or holds it at the seller's disposal: *Provided*, That the hearing aid is in its original condition less normal wear and tear;

(d) By sending notice of such cancellation to the licensee at his place of business by certified mail, return receipt requested, which shall be posted not later than thirty days following the date of purchase: *Provided*, That in the event of cancellation pursuant to this subsection the licensee shall, without request, refund to the purchaser within ten days after such cancellation of all deposits, including any down payment less ten percent of the total purchase price and less the reasonable price of ear molds, if any, and shall return all goods traded in to the licensee on account or in contemplation of the sale less any reasonable costs actually incurred in making ready for sale, goods so traded in: *And provided further*, That the buyer shall incur no additional liability for such cancellation.

(4) Nothing in this chapter shall be construed to pertain in any manner to the testing of human hearing for the purpose of determining the nature, loss, cause or function of hearing and not for the purpose of fitting and dispensing hearing aids. [1973 1st ex.s. c 106 § 19.]

**18.35.200 Other laws unaffected.** The provisions of this chapter shall not exclude the application of any other law to persons or circumstances covered under this chapter. [1973 1st ex.s. c 106 § 20.]

**18.35.900 Severability—**—1973 1st ex.s. c 106. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provisions to other persons or circumstances is not affected. [1973 1st ex.s. c 106 § 21.]

## Chapter 18.36 DRUGLESS HEALING

### Sections

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**Reviser's note:** "Director" and "director of licenses" have been substituted for "board" and "board of examiners" throughout this chapter, since the state board of drugless examiners was abolished by 1921 c 7 § 135 and its powers and duties were transferred to the director of licenses by 1921 c 7 § 96 (RCW 43.24.020), which powers and duties have subsequently devolved to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest.

*Crimes relating to pregnancy and childbirth: Chapters 9.02, 9A.32 RCW.*

*Examining committee in basic sciences: Chapter 43.74 RCW.*

*Rebating by practitioners of healing professions prohibited: Chapter 19.68 RCW.*

**18.36.010 Definitions—Purpose.** The term "drugless therapeutics," as used in RCW 18.36.010 through 18.36.165 consists of hydrotherapy, dietetics, electrotherapy, radiography, sanitation, suggestion, mechanical and manual manipulation for the stimulation of physiological and psychological action to establish a normal condition of mind and body, but shall in no way include the giving, prescribing or recommending of pharmaceutical drugs and poisons for internal use, the purpose of RCW 18.36.010 through 18.36.165 being to confine practitioners hereunder to drugless therapeutics.

The words "certificate" and "license" shall be known as interchangeable terms. [1919 c 36 § 13; RRS § 10123.]

**18.36.020 "Separate and coordinate system".** The term "separate and coordinate system" as used in RCW 18.36.010 through 18.36.165 is defined as follows:

**Food science.** Is the science of treating disease through the chemical action of foods, water, nonmedicinal herbs, roots, barks and all natural food elements other than pharmaceutical drugs and poisons, to bring about a normal condition of health.

**Mechano-therapy.** Is a system of therapeutics which enables the practitioner to know how to apply scientifically the mechanics of hydrotherapy, dietetics, circumstances, idea and manual manipulation for the stimulation of psycho and physiological action to establish a normal condition of the body.

**Suggestive therapeutics.** Is a system of healing which enables the practitioner to know how to offer suggestions that will cause the mind of the patient to overcome the disease of the body and bringing mind and body into harmony, and both into harmony with environment.

**Physcultopathy.** Is a system of healing which enables the practitioner to know the scientific effect of movements on the body and how to direct a system of mechanical gymnastics that restore the diseased parts or functions to a normal condition. [1919 c 36 § 12; RRS § 10122.]

**18.36.030 Exemptions.** Nothing in RCW 18.36.010 through 18.36.165 shall be construed as to prohibit service in the case of emergency, or the domestic administration of families' remedies, nor shall RCW 18.36.010 through 18.36.165 apply to any commissioned health officer in the United States army, navy or marine hospital service, in discharge of his official duties, nor to any licensed dentist when engaged exclusively in the practice of dentistry, nor to any duly licensed physician in the practice of medicine, or surgery, nor to a person duly licensed to practice osteopathy, from using or recommending drugless methods of healing in the course of their practice, nor shall this apply to any practitioner from any other state who visits this state in response to a call to treat a particular patient: *Provided*, such practitioner shall not open an office or appoint a place of meeting patients within the limits of this state, nor shall RCW 18.36.010 through 18.36.165 be construed to discriminate against any particular school of drugless therapeutics or to interfere in any way with the practice of religion: *Provided*, also that nothing in RCW 18.36.010 through 18.36.165 shall be held to apply to, or regulate any kind of treatment by prayer. [1919 c 36 § 8; RRS § 10118. FORMER PART OF SECTION: 1919 c 36 § 10, part, now codified in RCW 18.36.140.]

**18.36.040 License required—Fee—Qualifications—Examinations—Refusals and cancellations—Appeals.** Only persons desiring to practice drugless therapeutics in this state shall apply to said director for a license and pay a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, which sum in no case shall be refunded. If at a time appointed, or at the next regular examination, he or she shall prove he or she has completed a residence course of three entire sessions of thirty-six weeks each at a chartered drugless school, the entrance requirements of which was a high school education, or its equivalent and shall pass an examination in the following subjects, to wit: anatomy, physiology, hygiene, symptomatology, urinalysis, dietetics, hydrotherapy, radiography, electrotherapy, gynecology, obstetrics, psychology, mechanical and manual manipulation, they shall be granted a license by said director, or if the school attendance of said applicant was prior to the passage of RCW 18.36.010 through 18.36.165 a diploma from a chartered drugless school, the entrance requirements of which was a common school education or its equivalent, and two years continuous practice in this state shall suffice; or if the applicant has no diploma but has been in continuous practice in any of the drugless systems herein mentioned for the past four years, two years of which shall have been in continuous practice in one place in this state, he or she shall be allowed to

practice: *Provided*, said applicant shall take an examination on the following subjects: anatomy, physiology, hygiene, symptomatology, mechanical and manual manipulation. After such examination the director shall grant the applicant a license to practice drugless therapeutics in the state of Washington. The examinations shall be both scientific and practical and thoroughly test the fitness of the candidate. All answers to questions peculiar to any school of therapeutics shall be scrutinized and their sufficiency passed upon by the director, but the following subjects, to wit: anatomy, physiology, hygiene, urinalysis, and gynecology, shall be construed to be in common with all systems herein mentioned, and each candidate shall be examined in each of said subjects: *Provided*, after 1921, the following subjects shall be construed as common to all systems, to wit: anatomy, physiology, hygiene, urinalysis, symptomatology, hydrotherapy, and gynecology. The director may refuse to grant a license to, or may revoke the license of any person guilty of unprofessional conduct, subject to the right of appeal within ninety days, to the superior court of the county where the board met when said license was refused, or revocation made. Any license granted without a full and fair compliance with the provisions of RCW 18.36.010 through 18.36.165 may be canceled in any action brought in the name of the state by the prosecuting attorney of the county where the examination was held, or said action may be brought by the attorney general; and if a license is denied an applicant shall have the right to petition the superior court where said examination was held for an order compelling said board to issue said license.

Continuous practice as herein provided shall be construed to apply to drugless physicians who have actually been practicing in this state, even if they have not received a license under the present medical laws. [1975 1st ex.s. c 30 § 39; 1919 c 36 § 3; RRS § 10113. Formerly RCW 18.36.040, 18.36.050, part, 18.36.080, 18.36.090, part, and 18.36.160.]

*Examining committee for basic sciences: Chapter 43.74 RCW.*

**18.36.050 Examination regulations—Fee—Credits—Conduct of examinations.** The examination held by the director under RCW 18.36.010 through 18.36.165 shall be conducted in accordance with the following regulations:

(1) Each applicant is required to make an affidavit setting forth his age, place of residence, time and place of each course of lectures, or other work connected with his drugless education and the date of graduation, or length of time in practice. The affidavit must be corroborated by the exhibition of a certificate from the proper officers of the college, showing that the applicant had completed the prescribed course for graduation. No advance standing shall be recognized for work done at other than drugless colleges.

(2) A fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended must accompany the application. This fee is under no consideration to be returned, but if the applicant should fail to secure an average of sixty-five percent, and should be denied a license, such applicant shall, without paying a

further fee and without losing his classification under the provisions of RCW 18.36.010 through 18.36.165, be permitted to take another examination any time within two years. Drugless practitioners who hold a diploma from a legally incorporated drugless school who have practiced in this state two years previous to the passing of RCW 18.36.010 through 18.36.165 and those having no diploma but who have been in continuous practice in this state for three years, shall be given a credit of fifteen percent on the general average.

(3) The examination shall be in charge of the director, and the papers of candidates shall be known by numbers which shall be arranged as follows: Envelopes shall be numbered and each containing a blank corresponding to the number, on which blank the applicant shall write his name and address, and return to the envelope, sealed by the applicant, and delivered to the director. Each candidate shall place on his paper the number given him and the year of graduation.

(4) The director shall examine the papers and place the mark opposite each candidate's number. When the markings are completed, the envelopes containing the names are to be opened and the names placed opposite their respective numbers.

(5) No dishonest methods will be tolerated, and any candidate disregarding these rules shall be debarred from further examination.

(6) Each subject for examination shall be covered by ten questions, and two hours' time shall be allowed for each subject.

(7) No candidate shall be allowed to leave the examination room after the question papers have been distributed, until the questions are answered and delivered to the examiners in charge.

(8) All examinations shall be in English. Within twenty days after a license is granted or refused, the reasons shall be set forth in writing and placed with the papers used in the examination, and all of said examination papers shall be filed with the director within thirty days after said license has been granted or refused. [1975 1st ex.s. c 30 § 40; 1919 c 36 § 11; RRS § 10121. Formerly RCW 18.36.050, 18.36.070 and 18.36.090. FORMER PART OF SECTION: 1919 c 36 § 3, part, now codified in RCW 18.36.040.]

**18.36.060 Forms of certificates to practice—Affidavit of good character and diploma.** The following forms of certificates shall be issued by the director:

(1) A certificate authorizing the holder thereof to practice mechanotherapy;

(2) A certificate authorizing the holder thereof to practice suggestive therapeutics;

(3) A certificate authorizing the holder thereof to practice food science;

(4) A certificate authorizing the holder thereof to practice physcultopathy;

(5) A certificate for any other separate and coordinate system of drugless practice: *Provided*, they shall show evidence of not less than fifty graduates, practicing in this state, whose requirements shall be no less than as



set forth in RCW 18.36.010 through 18.36.165. Practitioners hereunder shall confine their practice to the subjects and system or systems represented by their certificate or certificates granted by said director. The applicant for an examination must file satisfactory testimonials of good moral character and a diploma issued by some legally chartered drugless college, or satisfactory evidence of having possessed such diploma, except as herein otherwise provided, and must fill out a blank application to be sworn to before some person authorized to take acknowledgments, showing that he or she is the person named in the diploma, is the lawful holder thereof, and that the same was procured in the regular course of instruction and examination, without fraud or misrepresentation. The said application shall be made on a blank furnished by said director, and shall contain such other information concerning the instruction and preliminary education of the applicant as said director may by rule adopt. [1919 c 36 § 4; RRS § 10114. Formerly RCW 18.36.060 and 18.36.100.]

**Reviser's note:** 1919 c 36 § 4 reads as follows: "Sec. 4. The following forms of certificates shall be issued by said board under the seal thereof, and signed by the president and secretary:

First. A certificate authorizing the holder thereof to practice mechanotherapy;

Second. A certificate authorizing the holder thereof to practice suggestive therapeutics;

Third. A certificate authorizing the holder thereof to practice food science;

Fourth. A certificate authorizing the holder thereof to practice physcultopathy;

Fifth. A certificate for any other separate and coordinate system of drugless practice, and such system shall be given two representations on the board: *Provided*, they shall show evidence of not less than fifty graduates, practicing in this state, whose requirements shall be no less than as set forth in this act. Practitioners hereunder shall confine their practice to the subjects and system or systems represented by their certificate or certificates granted by said board. The applicant for an examination must file at least thirty days prior to a regular meeting satisfactory testimonials of good moral character and a diploma issued by some legally chartered drugless college, or satisfactory evidence of having possessed such diploma, except as herein otherwise provided, and must fill out a blank application to be sworn to before some person authorized to take acknowledgments, showing that he or she is the person named in the diploma, is the lawful holder thereof, and that the same was procured in the regular course of instruction and examination, without fraud or misrepresentation. The said application shall be made on a blank furnished by said board, and shall contain such other information concerning the instruction and preliminary education of the applicant as said board may by rule adopt." [1919 c 36 § 4.]

This section has been changed to refer to the director of licenses as the state board of drugless examiners was abolished and its powers and duties transferred to the director of licenses, which powers and duties subsequently devolved to the business and professional administration within the department of motor vehicles. See note following chapter digest.

**18.36.110 License—Registration in county.** Before engaging in practice, the holder shall file his license for record with the county clerk in the county where he resides. Upon removal to another county he shall file his license in like manner. Such clerk shall keep in the record book of said licenses an index, showing the date and page record, and on demand shall furnish the director a list of licenses on file. Upon notice to the clerk of the death or removal of a licensee, or revocation of a license, he shall note the same upon the records. [1919 c 36 § 6; RRS § 10116.]

**Reviser's note:** See note following chapter digest.

**18.36.115 License renewal fee—Penalty.** Every person heretofore or hereafter granted a license under this chapter shall pay to the director an annual license renewal fee to be determined by the director as provided in RCW 43.24.085 as now or hereafter amended, on or before the first day of July of each year, and thereupon the license of such person shall be renewed for a period of one year. Any failure to register and pay the annual license renewal fee shall render the license invalid, but such license shall be reinstated upon written application therefor to the director, and payment to the state of a penalty fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, together with all delinquent annual license renewal fees. [1975 1st ex.s. c 30 § 41; 1971 ex.s. c 266 § 7; 1953 c 83 § 1.]

**18.36.120 Advertising restrictions.** On all cards, books, papers, signs, or other written or printed means of giving information to the public on any system of practice, the practitioner shall use after or below his name the proper term designating the special line of drugless practice in which he is engaged, and shall not use after his name the letters, "M.D." or Doctor of Medicine and Surgery, nor "D.O." or Doctor of Osteopathy, or "D.C." or Doctor of Chiropractic. [1919 c 36 § 14; RRS § 10124.]

*Crimes relating to advertising: Chapter 9.04 RCW.*

**18.36.130 Applicability of health regulations.** All persons granted licenses or certificates under RCW 18.36.010 through 18.36.165, shall be subject to the state and municipal regulations, relating to the control of contagious diseases, the reporting and certifying of births and deaths, and all matters pertaining to public health; and all such reports shall be accepted as legal. [1919 c 36 § 7; RRS § 10117.]

*Public health and safety: Title 70 RCW.*

*Vital statistics: Chapter 70.58 RCW.*

**18.36.140 Unlawful practices.** Any person not heretofore authorized by law who shall practice or attempt to practice or hold himself out as practicing drugless therapeutics in the state of Washington without having obtained the license herein provided for, contrary to any provisions of RCW 18.36.010 through 18.36.165 shall be guilty of a misdemeanor, and shall be punished as provided by law for such offenses. Any person shall be regarded as practicing within the meaning of RCW 18.36.010 through 18.36.165 who shall use, prescribe, direct or recommend, any drugless treatment for the relief of any wound, fracture, bodily injury, or disease, either mental or physical: *Provided*, RCW 18.36.010 through 18.36.165 shall not be construed to discriminate against any particular school of drugless therapeutics, or to interfere in any way with the practice of religion: *Provided*, also, that nothing in RCW 18.36.010 through 18.36.165 shall be held to apply to or regulate any kind of treatment by prayer. [1919 c 36 § 10; RRS § 10120. Formerly RCW 18.36.140 and 18.36.030, part.]



*Excepted practices: RCW 18.36.030.*

**18.36.150 Unprofessional conduct.** The words "unprofessional conduct" as used in RCW 18.36.010 through 18.36.165 is hereby declared to mean:

(1) The procuring, aiding or abetting in procuring a criminal abortion.

(2) The wilful betraying of a professional secret.

(3) Advertising any means or remedy whereby the monthly periods of women can be regulated, or menses reestablished.

(4) Conviction of any offense involving moral turpitude.

(5) Habitual intemperance.

(6) The personation of another licensed practitioner.

(7) Exploiting or advertising through the press, or by the use of hand bills, circulars or other periodicals, other than professional cards, giving only name, address, profession, office hours and telephone connections.

(8) All advertising which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons.

(9) Conspiring to bring or cause to be brought any action in court against any licensed practitioner for alleged malpractice or agree with anyone for a share or part of any sum of money to be recovered in such action: *Provided*, That nothing herein shall be construed to prevent any licensed practitioner from testifying against any other licensed practitioner in any action for alleged malpractice. [1919 c 36 § 9; RRS § 10119.]

*Abortion: Chapter 9.02 RCW.*

*Barratry and allied offenses: RCW 9.12.010.*

**18.36.165 Violations—Penalty.** Any person violating any of the provisions of RCW 18.36.010 through 18.36.165 shall be guilty of a misdemeanor, and shall be punished as provided by law. [1919 c 36 § 17; RRS § 10125. Formerly codified as RCW 18.36.250.]

**18.36.170 Revocation for want of educational qualifications—Grounds—Order to appear—Service.** Whenever it shall come to the attention of the director of licenses that any applicant for a license to practice any form of drugless healing in this state under the provisions of RCW 18.36.010 through 18.36.165, either with or without examination, presented with his application a diploma purporting to have been issued to such applicant by a drugless school, and a license was granted such applicant wholly or in part by reason of such diploma, and the director of licenses has reasonable ground to believe that the drugless school issuing such diploma, and the persons in charge thereof, have issued diplomas to persons who had not a high school education or its equivalent and who had not completed a residence course of three entire sessions of thirty-six weeks each in the school issuing the diploma, the director of licenses shall have the power to make and enter an order directed to such licentiate, setting forth the name of the licentiate, the date of his license and the name of the drugless school issuing the diploma upon which the license was based, and requiring such licentiate to appear before the director of licenses at his office in the

city of Olympia at a time specified in the order, which shall not be less than twenty days after the service of a copy of such order upon him, and then and there to produce the diploma upon which his license was issued and produce and deliver to the director of licenses his license to practice drugless healing, and to testify under oath as to his educational qualifications at the time of his entering the school issuing the diploma and the length of his actual resident attendance at such school and all other schools for attendance at which credits were claimed. The order provided for shall be served upon such licentiate and return of service made in the manner provided by law for the service and return of summons in civil action. [1925 c 10 § 1; RRS § 10125-1. Formerly RCW 18.36.170 through 18.36.190.]

*Reviser's note: See note following chapter digest.*

**18.36.200 Revocation for want of educational qualifications—Default—Relief therefrom.** If any licentiate to practice drugless healing upon whom the order provided for in RCW 18.36.170 shall have been served shall fail or refuse to comply with such order in any particular the director of licenses shall have power to revoke the license of such licentiate: *Provided*, That if after any such revocation for failure to appear shall have been entered the licentiate shall establish to the satisfaction of the director that his failure to appear was occasioned by unavoidable accident and was not wilful, the director shall have the power to withdraw such revocation and grant a hearing. [1925 c 10 § 2; RRS § 10125-2.]

**18.36.210 Revocation for want of education qualifications—Conduct of hearing.** In case any licentiate shall appear at the hearing hereinbefore provided for and testify under oath as to the matters required in said order he shall have the right to be represented by counsel, to call witnesses and introduce documentary evidence in support of his claims that he had the required educational qualifications and resident attendance at the school issuing the diploma, or its equivalent; and the director shall have the power by subpoena to compel the attendance of witnesses and the production of documentary evidence to controvert the claim of the licentiate, and any such hearing may be adjourned from time to time by the director for a reasonable length of time to permit of the securing of evidence in favor of or against the claims of the licentiate. [1925 c 10 § 3; RRS § 10125-3.]

**18.36.220 Revocation for want of educational qualifications—Revocation or return of license.** If at the conclusion of the hearing hereinabove provided for the licentiate shall have failed to establish to the satisfaction of the director of licenses that on the date of the issuance of his diploma he had a high school education or its equivalent and had in fact completed a residence course of three entire sessions of thirty-six weeks each in the school by which such diploma was issued, or any other schools for which credits were properly allowable, it shall be the duty of the director of licenses to revoke the license of the licentiate to practice drugless healing. In

case the director of licenses does not revoke the license the same shall be returned to the licentiate. [1925 c 10 § 4; RRS § 10125-4.]

Reviser's note: See note following chapter digest.

**18.36.230 Revocation for want of educational qualifications—Appeal to superior court.** Every licentiate to practice drugless healing whose license shall have been revoked as in RCW 18.36.170 through 18.36.245 provided after a hearing and feeling himself aggrieved by such revocation shall have the right by a writ of review sued out in the manner provided by law within ten days after the entry of such order of revocation to have the proceeding for the revocation of his license reviewed in the superior court of Thurston county, and the decision of such superior court shall be final. [1925 c 10 § 5; RRS § 10125-5.]

**18.36.240 Revocation for want of educational qualifications—Surrender of license—Penalty.** It shall be the duty of the licentiate whose license has been revoked as provided in RCW 18.36.170 through 18.36.245, within ten days after the final order revoking such license, to surrender his license to the director of licenses, and every person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor. [1925 c 10 § 6; RRS § 10125-6.]

**18.36.245 Construction—1925 c 10.** Nothing in RCW 18.36.170 through 18.36.240 shall be construed as amending, modifying or repealing any other provision of law for the revocation of licenses, but RCW 18.36.170 through 18.36.240 shall be construed as additional and supplemental legislation. [1925 c 10 § 7.]

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**Chapter 18.37  
ELECTRICIANS**

Sections

- 18.37.010 Definitions.
- 18.37.020 Certificate of competency—Required—Business or trade of electrician defined.
- 18.37.030 Application for certificate of competency—Evidence of experience and competency—Forms.
- 18.37.040 Examinations—Eligibility—Rules and regulations.
- 18.37.050 Examinations—Contents—Times—Fees—Certification of results.
- 18.37.060 Certificate of competency—Issuance—Renewal—Fee—Effect.
- 18.37.070 Persons engaged in business or trade as electrician on effective date.
- 18.37.080 Temporary permits.
- 18.37.090 Revocation of certificate of competency—Grounds—Procedure.
- 18.37.100 Advisory board of electricians.
- 18.37.120 Disposition of fees.
- 18.37.130 Powers and duties of director.
- 18.37.140 Exemptions from chapter requirements.
- 18.37.150 Penalty.

*Electrical inspections, electricians, construction: Chapters 19.28 and 19.29 RCW.*

**18.37.010 Definitions.** Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meaning:

(1) "Advisory board" means the state advisory board of electricians;

(2) "Department" means the department of labor and industries;

(3) "Director" means director of department of labor and industries;

(4) "Journeyman electrician" means any person who has been issued a certificate of competency by the department of labor and industries as provided in this chapter for the installation of electrical equipment for light, heat, or power.

(5) "Specialty electrician" means anyone who has been issued a specialty certificate of competency by the department of labor and industries. [1975-'76 2nd ex.s. c 39 § 1; 1975 1st ex.s. c 70 § 1; 1973 1st ex.s. c 206 § 1.]

**18.37.020 Certificate of competency—Required—Business or trade of electrician defined.** (1) No person shall engage in the business or trade as a journeyman electrician or specialty electrician without having a current certificate of competency issued by the department in accordance with the provisions of this chapter.

(2) The business or trade of electrician, as herein used, shall encompass all acts involving installation or maintenance of the distribution of electricity, except as is hereinafter specifically excluded. [1975-'76 2nd ex.s. c 39 § 2; 1975 1st ex.s. c 70 § 2; 1973 1st ex.s. c 206 § 2.]

**18.37.030 Application for certificate of competency—Evidence of experience and competency—Forms.** Any person desiring to be issued a certificate of competency as provided in this chapter shall deliver evidence in a form prescribed by the department affirming that said person has had sufficient experience in as well as demonstrated general competency in the electrical trade or electrical specialty so as to qualify him to make an application for a certificate of competency as a journeyman electrician or specialty electrician: *Provided*, That successful completion of a course of study in the electrical trade as defined by this chapter in the armed services of the United States or at a school accredited by the coordinating council on occupational education shall constitute sufficient evidence of experience and competency to enable such person to make application for a certificate of competency: *Provided, further*, That completion of such a course of study shall be substitutable for the practical experience required by RCW 18.37.040 only according to the duration of the course.

In addition to supplying the evidence as prescribed in this section, each applicant for a certificate of competency shall submit an application for such certificate on such form and in such manner as shall be prescribed by the director of the department. [1975-'76 2nd ex.s. c 39 § 3; 1973 1st ex.s. c 206 § 3.]

**18.37.040 Examinations—Eligibility—Rules and regulations.** Upon receipt of the application and evidence set forth in RCW 18.37.030, the director shall review the same and make a determination as to whether the applicant is eligible to take an examination for the

certificate of competency. To be eligible to take the examination the applicant must have worked under the supervision of a journeyman electrician or specialty electrician certified under this law. A journeyman electrician shall have satisfactorily attended for a minimum of two years and successfully completed an accredited vocational or technical school program related to the electrical trade, or shall furnish written evidence that he has had at least four years practical experience in the wiring for the installation of electrical equipment of light, heat, and power. A specialty electrician shall furnish written evidence that he has had at least two years practical experience in his specialty. No other requirement for eligibility may be imposed. The director shall establish reasonable rules and regulations for the examinations to be given applicants for certificates of competency. In establishing said rules, regulations, and criteria, the director shall consult with the state advisory board of electricians as established in RCW 18.37.100. Upon determination that the applicant is eligible to take the examination, the director shall so notify him, indicating the time and place for taking the same. [1975-'76 2nd ex.s. c 39 § 4; 1975 1st ex.s. c 70 § 3; 1973 1st ex.s. c 206 § 4.]

**18.37.050 Examinations—Contents—Times—Fees—Certification of results.** The department, in coordination with the advisory board, shall prepare a written examination to be administered to applicants for certificates of competency. The examination shall be so constructed to determine:

(1) Whether the applicant possesses varied general knowledge of the technical information and practical procedures that is identified with the status of journeyman electrician or specialty electrician; and

(2) Whether the applicant is sufficiently familiar with the applicable electrical codes and the administrative rules and regulations of the department pertaining to electrical installations and electricians.

The department shall administer at least twice annually the examination to persons eligible to take the same under the provisions of RCW 18.37.040. All applicants shall, before taking such examination, pay to the department a fifteen dollar fee: *Provided*, That any applicant taking said examination shall pay only such additional fee as is necessary to cover the costs of administering such additional examination.

The department shall certify the results of said examination, upon such terms and after such period of time as the director, in cooperation with the advisory board, shall deem necessary and proper. [1975-'76 2nd ex.s. c 39 § 5; 1973 1st ex.s. c 206 § 5.]

**18.37.060 Certificate of competency—Issuance—Renewal—Fee—Effect.** The department shall issue a certificate of competency to all applicants who have passed the examination provided in RCW 18.37.050, and who have otherwise complied with the provisions of this chapter and the rules and regulations promulgated thereto. The certificate shall bear the date of issuance, and shall expire on the first of July immediately following the date of issuance. The certificate shall

be renewable annually, upon application, on or before the first of July. An annual renewal fee of fifteen dollars shall be assessed for each certificate: *Provided, however*, That any person, firm or corporation, licensed and bonded pursuant to the provisions of RCW 19.28.120 shall not be assessed and shall not be required to pay the annual renewal fee for certification of competency.

The certificates of competency or permits provided for in this chapter shall grant the holder the right to engage in the work of electrical installation as a journeyman electrician or specialty electrician in accordance with its provisions throughout the state and within any of its political subdivisions without additional proof of competency or any other license or permit or fee to engage in such work. [1975-'76 2nd ex.s. c 39 § 6; 1973 1st ex.s. c 206 § 6.]

**18.37.070 Persons engaged in business or trade as electrician on effective date.** No examination shall be required of any applicant for a certificate of competency who, on July 16, 1973, was engaged in a bona fide business or trade as a journeyman electrician in the state of Washington. Applicants qualifying under this section shall be issued a certificate by the department upon making an application as provided in RCW 18.37.030 and paying the fee required under RCW 18.37.050: *Provided*, That no applicant under this section shall be required to furnish such evidence as required by RCW 18.37.030. [1973 1st ex.s. c 206 § 7.]

**18.37.080 Temporary permits.** The department is authorized to grant and issue temporary permits in lieu of certificates of competency whenever an electrician coming into the state of Washington from another state requests the department for a temporary permit to engage in the business and trade of electrical installation as an electrician during the period of time between filing of an application for a certificate as provided in RCW 18.37.030 and taking the examination provided for in RCW 18.37.050: *Provided*, That the department is authorized to enter into reciprocal agreements with other states providing for the acceptance of such states' journeyman certificate of competency or its equivalent when such states requirements are equal to the standards set by this chapter: *And provided further*, That no temporary permit shall be issued to:

(1) Any person who has failed to pass the examination for a certificate of competency;

(2) Any applicant under this section who has not furnished the department with such evidence required under RCW 18.37.030;

(3) To any apprentice electrician. [1975-'76 2nd ex.s. c 39 § 7; 1973 1st ex.s. c 206 § 8.]

**18.37.090 Revocation of certificate of competency—Grounds—Procedure.** (1) The department may revoke any certificate of competency upon the following grounds:

(a) The certificate was obtained through error or fraud;

(b) The holder thereof is judged to be incompetent to carry on the business and trade of electrical installations as a journeyman electrician or specialty electrician;

(c) The holder thereof has violated any of the provisions of this chapter or any rule or regulation promulgated thereto.

(2) Before any certificate of competency shall be revoked, the holder thereof shall be given written notice of the department's intention to do so, mailed by registered mail, return receipt requested, to said holder's last known address. Said notice shall enumerate the allegations against such holder, and shall give him the opportunity to request a hearing before the advisory board. At such hearing, the department and the holder shall have opportunity to produce witnesses and give testimony. The hearing shall be conducted in accordance with the provisions of chapter 34.04 RCW. The board shall render its decision based upon the testimony and evidence presented, and shall notify the parties immediately upon reaching its decision. A majority of the board shall be necessary to render a decision. [1975-'76 2nd ex.s. c 39 § 8; 1973 1st ex.s. c 206 § 9.]

**18.37.100 Advisory board of electricians.** (1) There is created a state advisory board of electricians, to be composed of three members appointed by the governor. One member shall be a journeyman electrician, one member shall be a person conducting an electrical installation business, and one member from the general public who is familiar with the business and trade of electrical installations.

(2) The initial terms of the members of the advisory board shall be one, two, and three years respectively as set forth in subsection (1) of this section. Upon the expiration of said terms, the governor shall appoint a new member to serve for a period of three years. In the case of any vacancy on the board for any reason, the governor shall appoint a new member to serve out the term of the person whose position has become vacant. This shall not be construed to mean the governor cannot reappoint a member.

(3) The advisory board shall carry out all the functions and duties enumerated in this chapter, as well as generally advise the department on all matters relative to this chapter.

(4) Each member of the advisory board shall receive travel expenses in accordance with the provisions of RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for each day in which such member is actually engaged in attendance upon the meetings of the advisory board. [1975-'76 2nd ex.s. c 34 § 36; 1973 1st ex.s. c 206 § 10.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.37.120 Disposition of fees.** All moneys received from certificates, permits, or other sources, shall be paid to the state general fund. [1973 1st ex.s. c 206 § 12.]

**18.37.130 Powers and duties of director.** The director may promulgate rules, make specific decisions,

orders, and rulings, including therein demands and findings, and take other necessary action for the implementation and enforcement of his duties under this chapter: *Provided*, That in the administration of this chapter the director shall not enter any controversy arising over work assignments with respect to the trades involved in the construction industry. [1973 1st ex.s. c 206 § 13.]

**18.37.140 Exemptions from chapter requirements.** Nothing in this chapter shall be construed to require that a person obtain a license or a certified electrician in order to do electrical work at his residence or farm or place of business or on other property owned by him: *Provided, however*, That nothing in this chapter shall be intended to derogate from or dispense with the requirements of any valid electrical code enacted by a political subdivision of the state, except that no code shall require the holder of a certificate of competency to demonstrate any additional proof of competency or obtain any other license or pay any fee in order to engage in the trade of electrical installation: *And provided further*, That this chapter shall not apply to common carriers subject to Part I of the Interstate Commerce Act, nor to their officers and employees: *And provided further*, That nothing in this chapter shall be deemed to apply to the installation or maintenance of communications or electronic circuits, wires and apparatus, radio or television stations; nor to any electrical public utility or its employees, in the installations and maintenance of electrical wiring, circuits, apparatus, and equipment by or for such public utility, or comprising a part of its plants, lines or systems. The licensing provisions of this chapter shall not apply to persons making electrical installations on their own property or to regularly employed employees working on the premises of their employer: *And provided further*, That nothing in this chapter shall be construed to restrict the right of any householder to assist or receive assistance from a friend, neighbor, relative or other person when none of the individuals doing such electrical installation hold themselves out as engaged in the trade or business of electrical installations. [1973 1st ex.s. c 206 § 14.]

**18.37.150 Penalty.** Violation of this chapter or of the department rules and regulations provided for in this chapter by a person, firm, or corporation, shall be punishable by a fine of not more than fifty dollars. Each day of such violation constitutes a separate offense. [1973 1st ex.s. c 206 § 15.]

## Chapter 18.39

### EMBALMERS—FUNERAL DIRECTORS

Sections	
18.39.010	Definitions.
18.39.020	Licensing required.
18.39.030	Applicant—Funeral director—Eligibility.
18.39.040	Applicant—Embalmer—Eligibility—Examination—Registration.
18.39.050	Application—Form—Photograph—Fees—Renewals and fees.
18.39.070	Examinations—Applications—Notice—Passing grades—Second examinations.
18.39.080	Examination—Funeral director—Subjects.

- 18.39.100 License—Form—Restrictions.
- 18.39.120 Apprentices—Registration—Notice of termination—Fees.
- 18.39.130 License—Reciprocity with other states.
- 18.39.150 License lapse—Reinstatement—Fee—Reexamination.
- 18.39.160 Contagious diseases—Report to health director—Funerals.
- 18.39.170 Inspector of funeral directors and embalmers—Appointment—Eligibility—Term—Powers and duties.
- 18.39.180 Powers of director—Rules and regulations—Suspension or revocation of licenses—Grounds.
- 18.39.190 Display of personal names where trade name, etc., used.
- 18.39.210 Complaint by one embalmer against another—Deposit of costs of hearing.
- 18.39.220 Unlawful business practices—Penalty.
- 18.39.230 Violations—Penalty.
- 18.39.900 Severability—1937 c 108.

**Reviser's note:** The powers and duties of the director of licenses have devolved to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest.

*Burial and removal permits:* RCW 70.58.230.

*Cemeteries, morgues and human remains:* Title 68 RCW.

*Disposal of remains prohibited unless accompanied by proper permit:* RCW 70.58.260.

*Undertaker must file death certificate:* RCW 70.58.240.

**18.39.010. Definitions.** The term "funeral director" as used herein is a person engaged in the profession or business of conducting funerals and supervising or directing the burial and disposal of dead human bodies.

The term "embalmer" as used herein is a person engaged in the profession or business of disinfecting, preserving or preparing for disposal or transportation dead human bodies.

A "two-year college course" as used herein means the completion of sixty semester hours or ninety quarter hours of collegiate credit from a college or university approved by the director of licenses and the state examining committee.

Words used in this chapter importing the singular may be applied to the plural of the person or thing, words importing the plural may be applied to the singular, and words importing the masculine gender may be applied to the female. [1965 ex.s. c 107 § 1; 1937 c 108 § 1; RRS § 8313.]

*Number and gender:* RCW 1.12.050.

**18.39.020 Licensing required.** On and after the first day of January, 1938, it shall be unlawful for any person to act or hold himself out as a funeral director or embalmer or discharge any of the duties of a funeral director or embalmer as defined in this chapter unless he shall have first obtained and be the possessor of a valid and subsisting license so to do granted pursuant to the provisions of this chapter, or to open up, maintain or operate more than one place of business for directing or supervising the burial or disposal of dead human bodies, without having or employing at all times at least one funeral director to supervise and direct the business conducted therefrom. [1937 c 108 § 2; RRS § 8314-1. Prior: 1909 c 215 § 1. Formerly RCW 18.39.020 and 18.39.110.]

[Title 18—p 74]

**18.39.030 Applicant—Funeral director—Eligibility.** An applicant for a license as a funeral director must be at least eighteen years of age, and of good moral character and must have completed a course of not less than two years in an accredited college, and have completed a one-year course of training under a licensed funeral director in this state: *Provided*, That the requirement that an applicant must have completed a course of not less than two years in an accredited college and have completed a one-year course of training under a licensed funeral director in this state shall not apply to anyone who was a licensed embalmer, or who was registered as an apprentice embalmer or as an apprentice director, or who was attending an embalming college prior to June 11, 1965. [1971 ex.s. c 292 § 23; 1965 ex.s. c 107 § 2; 1955 c 52 § 2. Prior: 1949 c 126 § 1, part; 1947 c 105 § 1; 1937 c 108 § 3; Rem. Supp. 1949 § 8315-1, part.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**18.39.040 Applicant—Embalmer—Eligibility—Examination—Registration.** In order to obtain a license as an embalmer, the applicant must be at least eighteen years of age, of good moral character, and have completed, (1) two years at an accredited college, (2) a two-year course of training under a licensed embalmer in this state, and (3) a full course of instruction in an embalming school, approved by the director of motor vehicles and the state examining committee. No portion of the course of instruction under (3) above can be applied towards satisfaction of the two-year college course. In addition, the applicant must pass an examination in each of the following subjects: Embalming, anatomy including histology, embryology and dissection, pathology, bacteriology, public health including sanitation and hygiene, chemistry including toxicology, and restorative art, including plastic surgery and demi-surgery: *Provided, however*, That any person lawfully licensed as an embalmer in this state may register as such with said director of motor vehicles and, upon the payment of the license fee hereinafter specified, on or prior to said date, he shall thereupon be entitled to and receive a license as such for the year commencing January 1, 1938. In case of failure so to register, he can thereafter obtain a license only after examination as herein provided: *Provided, further*, That this section shall not apply to anyone who is attending an embalming school, or who is registered as an apprentice, prior to midnight, August 6, 1965. [1972 ex.s. c 120 § 1; 1971 ex.s. c 292 § 24; 1965 ex.s. c 107 § 3; 1947 c 105 § 2; 1945 c 150 § 1; 1937 c 108 § 4; Rem. Supp. 1947 § 8316-1. Formerly RCW 18.39.040 and 18.39.090.]

**18.39.050 Application—Form—Photograph—Fees—Renewals and fees.** Every application for a license hereunder, whether for an initial issue or for a renewal of one already granted, shall be made in writing on a form prescribed by the director and be verified by oath or affirmation before some person authorized by law to administer the same. The original application shall be accompanied by a natural photo of

applicant. Every person making application for an initial issue of a license when an examination is required shall pay to the state treasurer a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended and, in case such application is granted he shall pay the further fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended prior to the issuance of such license. Every licensed embalmer or licensed funeral director shall make an application for a renewal of his license for the succeeding year, on or before the 31st day of December of the current year, and pay to the state treasurer a fee to be determined by the director as provided in RCW 43.24.085 as now or hereafter amended, and upon the payment thereof shall be entitled to a renewal of his license. [1975 1st ex.s. c 30 § 42; 1971 ex.s. c 266 § 8; 1937 c 108 § 6; RRS § 8318-1. Formerly RCW 18.39-.050, 18.39.060 and 18.39.140.]

**18.39.070 Examinations—Applications—Notice—Passing grades—Second examinations.** (1) An examination for license hereunder shall be held by the director of licenses at least once each year at a time and place to be designated by him. Application to take an examination may be filed with said director at any time, and the director shall give each applicant notice of the time and place of the next ensuing examination by written notice mailed to such applicant's address as given upon his application not later than thirty days prior to examination, but no person shall be eligible to take such examination unless his application shall have been on file for a period of at least thirty days prior thereto. The applicant shall be deemed to have passed an examination successfully whenever he shall have attained a grade of not less than seventy-five percent in each subject of said examination. Any applicant who shall fail to make the required grade in any subject or subjects in his first examination shall be entitled to a second examination upon such subject or subjects at the next regular examination held, and no fee shall be required for said second examination.

(2) An applicant for a license hereunder may take his written examination after completing the educational requirements and before completing the course of training required under RCW 18.39.030 and 18.39.040. The license to a successful examinee shall be issued only when such a course of training has been completed: *Provided*, That if an applicant is otherwise qualified, the director of licenses shall issue a license to such applicant if he has made application to five licensed funeral directors for the one year course of training required by RCW 18.39.030 and has been turned down by said five licensed funeral directors. [1965 ex.s. c 107 § 4; 1937 c 108 § 5; RRS § 8317. Prior: 1909 c 215 §§ 8, 11.]

**18.39.080 Examination—Funeral director—Subjects.** Each applicant for a funeral director's license must pass an examination in the following subjects: Funeral directing, the signs of death, the manner in which death may be determined, the preparation, burial, disposal and transportation of dead human bodies, and the shipment of bodies of persons dying of contagious or

infectious diseases. [1955 c 52 § 3. Prior: 1949 c 126 § 1, part; 1947 c 105 § 1; 1937 c 108 § 3; Rem. Supp. 1949 § 8315-1, part.]

**18.39.100 License—Form—Restrictions.** Every license issued hereunder shall specify the name of the person to whom it is issued, shall bear the signature of the licensee for identification purposes, and shall be displayed conspicuously in his place of business. No license shall be assigned, and not more than one person shall carry on the profession or business of funeral directing or embalming under one license. [1937 c 108 § 7; RRS § 8319. Prior: 1909 c 215 § 13.]

**18.39.120 Apprentices—Registration—Notice of termination—Fees.** Every person engaged in the business of funeral directing or embalming, who shall employ an apprentice or apprentices to assist him in the conduct of such business, shall register the name of each apprentice so employed with said director at the time of the beginning of said apprenticeship, and such person shall also forward to the said director notice of the termination of such apprenticeship. Such registration shall also be made in the month of January of every year thereafter by the employer of such apprentice during the continuance of such apprenticeship. A fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended shall be paid to the state treasurer for the initial registration of such apprentice, and thereafter a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended shall be paid to the state treasurer for each annual renewal of the same. [1975 1st ex.s. c 30 § 43; 1937 c 108 § 10; RRS § 8322.]

**18.39.130 License—Reciprocity with other states.** The director may recognize licenses issued to funeral directors or embalmers from other states and, upon presentation of such licenses may, upon the payment of a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, issue to the lawful holder thereof the funeral director's or embalmer's license herein provided for: *Provided, however*, That such recognition shall not be extended to funeral directors or embalmers holding licenses from other states unless reciprocal rights are granted to holders of funeral directors' or embalmers' licenses granted in the state of Washington. Such reciprocal licenses may be renewed annually upon payment of the renewal license fee as herein provided in the case of license holders residing in the state of Washington. No person shall be entitled to such reciprocal license as a funeral director or embalmer unless he shall furnish proof that he has, in the state in which he is regularly licensed, complied with requirements substantially equal to those set out in this chapter. [1975 1st ex.s. c 30 § 44; 1937 c 108 § 15; RRS § 8325. Prior: 1909 c 215 § 16.]

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**18.39.150 License lapse—Reinstatement—Fee—Reexamination.** When a licensee has, for any reason, allowed his license to lapse, he may be granted a license upon application therefor made to the director,



upon payment to the state treasurer of the fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended: *Provided*, Such application is made within one year after the expiration of his previous license. If such application is not made within such one year period, as in this section provided, then the applicant shall be required to take an examination before the director and pay the license fee, as required by the provisions of this chapter in the case of initial applications. [1975 1st ex.s. c 30 § 45; 1937 c 108 § 8; RRS § 8320.]

**18.39.160 Contagious diseases—Report to health director—Funerals.** Every funeral director and every embalmer shall immediately report to the local health officer every contagious case on which he may be called. There shall be no public funeral of any contagious disease unless authorized by the director of the state board of health, in writing, before burial or disposal. [1937 c 108 § 12; RRS § 8323-1.]

*Public health and safety: Title 70 RCW.*

**18.39.170 Inspector of funeral directors and embalmers—Appointment—Eligibility—Term—Powers and duties.** There shall be appointed by said director of licenses an agent whose title shall be "inspector of funeral directors and embalmers of the state of Washington." No person shall be eligible for such appointment unless, at the time of his appointment, he shall have been a duly licensed embalmer in the state of Washington, with a minimum experience of not less than five consecutive years both as an embalmer and as a funeral director in the state of Washington. Said inspector shall hold office during the pleasure of said director of licenses, and the duties of said inspector shall be, and he is hereby authorized, to enter the office, premises, establishment or place of business, where funeral directing or embalming is carried on for the purpose of inspecting said office, premises, establishment or place of business, and the licenses and registrations of embalmers, funeral directors and apprentices operating therein. Such inspector shall serve and execute any papers or process issued by the director of licenses under authority of this chapter, and perform any other duty or duties prescribed or ordered by the director of licenses. Said inspector shall at all times be under the supervision of said director of licenses and he may also assist the state health commissioner in enforcing the provisions of the law relating to health and such rules and regulations as shall have been made and promulgated by the state board of health. [1937 c 108 § 16; RRS § 8325-1.]

**18.39.180 Powers of director—Rules and regulations—Suspension or revocation of licenses—Grounds.** For the purpose of carrying out the provisions of this chapter the director of licenses and state examining committee shall have power and it shall be their duty to adopt, promulgate and enforce reasonable rules and regulations. Said director of licenses shall have the power to suspend or revoke any license, after proper hearing and notice to the licensee, upon such licensee being found guilty of any of the following acts or omissions:

- (1) Conviction of a crime involving moral turpitude;
- (2) Unprofessional conduct which is hereby defined to include:
  - (a) Misrepresentation or fraud in the conduct of the business or the profession of a funeral director or embalmer;
  - (b) False or misleading advertising as a funeral director or embalmer;
  - (c) Solicitation of human dead bodies by the licensee, his agents, assistants or employees, whether such solicitation occurs after death or while death is impending: *Provided*, This chapter shall not be deemed to prohibit general advertising;
  - (d) Employment by the licensee of persons known as "cappers" or "steerers" or "solicitors" or other such persons to obtain funeral directing or embalming business;
  - (e) Employment directly or indirectly of any apprentice, agent, assistant, embalmer, employee, or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director or embalmer;
  - (f) The buying of business by the licensee, his agents, assistants or employees, or the direct or indirect payment or offer of payment of a commission by the licensee, his agents, assistants or employees, for the purpose of securing business;
  - (g) Gross immorality;
  - (h) Aiding or abetting an unlicensed person to practice funeral directing or embalming;
  - (i) Solicitation or acceptance by a licensee of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum or cemetery;
  - (j) Using any casket or part of a casket which has previously been used as a receptacle for, or in connection with, the burial or other disposition of, a dead human body;
  - (k) Violation of any of the provisions of this chapter;
  - (l) Violation of any state law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies;
  - (m) Fraud or misrepresentation in obtaining a license;
  - (n) Refusing to promptly surrender the custody of a dead human body, upon the express order of the person lawfully entitled to the custody thereof;
  - (o) For the selling or offering for sale of shares, certificates or an interest in the business of any funeral director or embalmer or in any corporation owning or conducting an undertaking or embalming establishment, under promise of or purporting to give to the purchasers thereof a right to the services of such funeral director, embalmer or corporation at a charge or cost less than that offered or given to the public at large. [1937 c 108 § 11; RRS § 8323. Prior: 1909 c 215 § 14. Formerly RCW 18.39.180 and 18.39.200.]

*False advertising: Chapter 9.04 RCW.*

*Record of caskets required: RCW 68.20.100.*

*Add 181*

**18.39.190 Display of personal names where trade name, etc., used.** It shall be unlawful for any person or persons in this state to use the name of any company,



association, corporation, trade name, or business name, in the operation of any business of funeral directing or embalming where services are rendered or contracted for or advertised to be rendered, unless said person or persons shall display in a conspicuous place upon or near the entrance, or in a conspicuous place in the office, if any, maintained for the transaction of business with the public, a printed statement in a form to be prescribed by the director of licenses, in plain English letters of not less than one inch in height, containing the name of every funeral director or embalmer who shall be engaged in the rendering of service within the office or establishment operated under said company, association, corporation, trade or business name. [1937 c 108 § 9; RRS § 8321.]

**18.39.210 Complaint by one embalmer against another—Deposit of costs of hearing.** Any licensed embalmer who shall prefer charges against any other licensed embalmer shall at the time such charges are preferred deposit with the director a sum sufficient to cover the probable expense to the director in hearing such charges, and in case the charge be substantiated in whole or in part, such deposit shall be returned to the complainant; but if such charge be not substantiated in whole or in part, the director shall retain a sum sufficient to reimburse it for the expense incurred, and return the balance of such deposit, if any there be, to the person making such deposit. [1909 c 215 § 15; RRS § 8324.]

**Reviser's note:** "Director" has been substituted for "board" in this section, since the state embalmers' examining board was abolished by 1921 c 7 § 135 and its powers and duties were transferred to the director of licenses by 1921 c 7 § 96 (RCW 43.24.020), which powers and duties subsequently devolved to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest.

**18.39.220 Unlawful business practices—Penalty.** Every funeral director or embalmer who shall pay, or cause to be paid, directly or indirectly, any sum of money, or other valuable consideration, for the securing of business, and every person who shall accept any sum of money, or other valuable consideration, directly or indirectly, from a funeral director or from an embalmer, in order that the latter may obtain business, and every person who shall sell, or offer for sale, any share, certificate, or interest in the business of any funeral director or embalmer, or in any corporation, firm or association owning or conducting the business of funeral directing or embalming, under promise or representation that the purchaser thereof shall receive or be entitled to the services of such funeral director, embalmer or corporation, firm or association at a price or cost less than that open to the general public, shall be guilty of a gross misdemeanor. [1937 c 108 § 13; RRS § 8323-2.]

*Add 223 225*

**18.39.230 Violations—Penalty.** Except as otherwise provided in this chapter, any person who shall violate, or fail to comply with, or aid or abet any person in violation of, or failure to comply with, any provisions of this chapter or of any of the rules or regulations promulgated by the director of licenses and state examining

committee pursuant thereto, shall be guilty of a gross misdemeanor. [1937 c 108 § 17; RRS § 8325-2.]

**18.39.900 Severability—1937 c 108.** If any section, subdivision, sentence or clause of this act shall be held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of this act. [1937 c 108 § 18.]

**Chapter 18.43  
ENGINEERS AND LAND SURVEYORS**

Sections

- 18.43.010 General provisions.
- 18.43.020 Definitions.
- 18.43.030 Board.
- 18.43.035 Bylaws—Employees—Rules—Investigations—Oaths, subpoenas—Annual report.
- 18.43.040 Registration requirements.
- 18.43.050 Application, registration and issuance fees.
- 18.43.060 Examinations.
- 18.43.070 Certificates and seals.
- 18.43.080 Expiration and renewals of certificates—Fees (as amended by 1975 c 23).
- 18.43.080 Expiration and renewals of certificates—Fees (as amended by 1975 1st ex.s. c 30).
- 18.43.090 Practitioners at time of act.
- 18.43.100 Registration of out-of-state applicants—Requirements—Reciprocity.
- 18.43.105 "Misconduct or malpractice in the practice of engineering" defined.
- 18.43.110 Revocations.
- 18.43.120 Violations and penalties.
- 18.43.130 Excepted services—Fees.
- 18.43.140 Injunctive relief, proof—Board's immunity from liability—Prosecutions.
- 18.43.150 Disposition of fees.
- 18.43.900 Short title.
- 18.43.910 Severability—1947 c 283.
- 18.43.920 Severability—1959 c 297.
- 18.43.930 Severability—1961 c 142.

**Reviser's note:** The powers and duties of the director of licenses have devolved to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest.

*Actions or claims for engineering and surveying services, limitations upon: RCW 4.16.300-4.16.320.*

*Lien for engineering services: Chapter 60.48 RCW.*

*Noncompliance with surveys and monuments recording law—Grounds for revocation: RCW 58.09.140.*

*Surveys and monuments recording law: Chapter 58.09 RCW.*

**18.43.010 General provisions.** In order to safeguard life, health, and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or land surveying, shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to practice or to offer to practice in this state, engineering or land surveying, as defined in the provisions of this chapter, or to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a professional engineer or a land surveyor, unless such a person has been duly registered under the provisions of this chapter. [1947 c 283 § 1; Rem. Supp. 1947 § 8306-21. Prior: 1935 c 167 § 2; RRS § 8306-2.]

*False advertising: Chapter 9.04 RCW.*

**18.43.020 Definitions.** Engineer: The term "engineer" as used in this chapter shall mean a professional engineer as hereinafter defined.

Professional engineer: The term "professional engineer" within the meaning and intent of this chapter, shall mean a person who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering as hereinafter defined, as attested by his legal registration as a professional engineer.

Engineer-in-training: The term "engineer-in-training" as used in this chapter shall mean a candidate for registration as a professional engineer who is a graduate in an approved engineering curriculum of four years or more from a school or college approved by the board as of satisfactory standing, or who has had four years or more of experience in engineering work of a character satisfactory to the board; and who, in addition, has successfully passed the examination in the fundamental engineering subjects prior to completion of the requisite years of experience in engineering work as provided in RCW 18.43.060, and who shall have received a certificate stating that he has successfully passed this portion of the professional examination.

Engineering: The term "engineering" as used in this chapter shall mean the "practice of engineering" as hereinafter defined.

Practice of engineering: The term "practice of engineering" within the meaning and intent of this chapter shall mean any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer, or through the use of some other title implies that he is a professional engineer; or who holds himself out as able to perform, or who does perform, any engineering service or work or any other professional service designated by the practitioner or recognized by educational authorities as engineering.

The practice of engineering shall not include the work ordinarily performed by persons who operate or maintain machinery or equipment.

Land surveyor: The term "land surveyor" as used in this chapter shall mean a person who, through technical knowledge and skill gained by education and/or by experience, is qualified to practice land surveying as hereinafter defined.

Practice of land surveying: The term "practice of land surveying" within the meaning and intent of this chapter, shall mean assuming responsible charge of the surveying of land for the establishment of corners, lines, boundaries, and monuments, the laying out and subdivision of land, the defining and locating of corners, lines, boundaries and monuments of land after they have been established, the survey of land areas for the purpose of determining the topography thereof, the making of topographical delineations and the preparing of maps and accurate records thereof, when the proper performance of such services requires technical knowledge and skill.

Board: The term "board" as used in this chapter shall mean the state board of registration for professional engineers and land surveyors, provided for by this chapter. [1947 c 283 § 2; Rem. Supp. 1947 § 8306-22. Prior: 1935 c 167 § 1; RRS § 8306-1.]

**18.43.030 Board.** A state board of registration for professional engineers and land surveyors is hereby created which shall exercise all of the powers and perform all of the duties conferred upon it by this chapter. The board shall consist of five registered professional engineers, who shall be appointed by the governor and shall have the qualifications as hereinafter required. The members of the first board shall be appointed within thirty days after the effective date of this act, to serve for the following terms: One member for one year, one member for two years, one member for three years, one member for four years, one member for five years, from the date of their appointment, or until their successors are duly appointed and qualified. Every member of the board shall receive a certificate of his appointment from the governor and before beginning his term of office shall file with the secretary of state his written oath or affirmation for the faithful discharge of his official duty. On the expiration of the term of any member, the governor shall in the manner hereinbefore provided appoint for a term of five years a registered professional engineer having the qualifications as hereinafter required, to take the place of the member whose term on said board is about to expire. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been duly appointed and shall have qualified.

Each member of the board shall be a citizen of the United States and shall have been a resident of this state for at least five years immediately preceding his appointment, and shall have been engaged in the practice of the profession of engineering for at least twelve years, and shall have been in responsible charge of important engineering work for at least five years. Responsible charge of engineering teaching may be construed as responsible charge of important engineering work.

Each member of the board shall receive the sum of twenty-five dollars each day when actually attending to the work of the board or any of its committees and for the time spent in necessary travel; and, in addition thereto, shall be reimbursed for travel expenses incurred

in carrying out the provisions of this chapter in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

The governor may remove any member of the board for misconduct, incompetency, or neglect of duty. Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor as hereinabove provided. [1975-'76 2nd ex.s. c 34 § 37; 1947 c 283 § 3; Rem. Supp. 1947 § 8306-23.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.43.035 Bylaws—Employees—Rules—Investigations—Oaths, subpoenas—Annual report.** The board may adopt and amend bylaws establishing its organization and method of operation, including but not limited to meetings, maintenance of books and records, publication of reports, code of ethics, and rosters, and adoption and use of a seal. Three members of the board shall constitute a quorum for the conduct of any business of the board. The board may employ such persons as are necessary to carry out its duties under this chapter. It may adopt rules and regulations reasonably necessary to administer the provisions of this chapter. It may conduct investigations concerning alleged violations of the provisions of this chapter. In making such investigations and in all proceedings under RCW 18.43.110, the chairman of the board or any member of the board acting in his place may administer oaths or affirmations to witnesses appearing before the board, subpoena witnesses and compel their attendance, and require the production of books, records, papers and documents. If any person shall refuse to obey any subpoena so issued, or shall refuse to testify or produce any books, records, papers or documents so required to be produced, the board may present its petition to the superior court of the county in which such person resides, setting forth the facts, and thereupon the court shall, in any proper case, enter a suitable order compelling compliance with the provisions of this chapter and imposing such other terms and conditions as the court may deem equitable. The board shall submit to the governor an annual report of its transactions of the preceding year, including a complete statement of the receipts and disbursements of the professional engineer's account of the general fund, attested by affidavits of its chairman and secretary. A roster, showing the names and places of business of all registered professional engineers and land surveyors shall also be included in the above mentioned annual report. Copies of this report shall be mailed to all professional engineers and land surveyors registered under this chapter, and furnished to the public upon request. [1961 c 142 § 1; 1959 c 297 § 1.]

**18.43.040 Registration requirements.** The following will be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer, engineer-in-training, or land surveyor, respectively, to wit:

As a professional engineer: A specific record of eight years or more of experience in engineering work of a character satisfactory to the board and indicating that

the applicant is competent to practice engineering; and successfully passing a written or oral examination, or both, in engineering as prescribed by the board.

Graduation in an approved engineering curriculum of four years or more from a school or college approved by the board as of satisfactory standing shall be considered equivalent to four years of such required experience. The satisfactory completion of each year of such an approved engineering course without graduation shall be considered as equivalent to a year of such required experience. Graduation in a curriculum other than engineering from a school or college approved by the board shall be considered as equivalent to two years of such required experience: *Provided*, That no applicant shall receive credit for more than four years of experience because of undergraduate educational qualifications. The board may, at its discretion, give credit as experience not in excess of one year, for satisfactory postgraduate study in engineering.

As an engineer-in-training: The board shall permit an applicant for registration as a professional engineer, upon his request, to take the prescribed examination in two stages. The first stage of the examination may be taken upon submission of his application for certification as an engineer-in-training and payment of the application fee herein prescribed, at any time after the applicant has completed four years of the required engineering experience as defined above. The first stage of the examination shall test the applicant's knowledge of appropriate fundamentals of engineering subjects, including mathematics and the basic sciences.

At any time after the completion of the required eight years of engineering experience as defined above, the applicant may take the second stage of the examination, upon submission of application for registration and payment of the application fee herein prescribed. This stage of the examination shall test the applicant's ability, upon the basis of his greater experience, to apply his knowledge and experience in the field of his specific training and qualifications.

As a land surveyor: A specific record of six years or more of experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to practice land surveying, and successfully passing a written or oral examination, or both, in surveying as prescribed by the board.

Graduation from a school or college approved by the board as of satisfactory standing, including the completion of an approved course in surveying, shall be considered equivalent to four years of such required experience.

No person shall be eligible for registration as a professional engineer, engineer-in-training, or land surveyor, who is not of good character and reputation.

Engineering teaching, of a character satisfactory to the board, shall be considered as experience not in excess of two years for professional engineering and one year for land surveying.

The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent shall not be deemed to be practice of engineering.

Any person having the necessary qualifications prescribed in this chapter to entitle him to registration shall be eligible for such registration although he may not be practicing his profession at the time of making his application. [1947 c 283 § 7; Rem. Supp. 1947 § 8306-24. Prior: 1935 c 167 § 2; RRS § 8306-2.]

**18.43.050 Application, registration and issuance fees.** Application for registration shall be on forms prescribed by the board and furnished by the director, shall contain statements made under oath, showing the applicant's education and detail summary of his technical work and shall contain not less than five references, of whom three or more shall be engineers having personal knowledge of his engineering experience.

The registration fee for professional engineers shall be determined by the director as provided in RCW 43.24.085 as now or hereafter amended, which shall accompany the application. The director shall also determine a fee as provided in RCW 43.24.085 as now or hereafter amended to be paid upon issuance of the certificate. The fee for engineer-in-training shall be determined by the director as provided in RCW 43.24.085 as now or hereafter amended, which shall accompany the application and shall include the cost of examination and issuance of certificate. When registration as a professional engineer is completed by an engineer-in-training an additional fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended shall be paid before issuance of certificate as professional engineer.

The registration fee for land surveyors shall be determined by the director as provided in RCW 43.24.085 as now or hereafter amended, which shall accompany the application and shall include the cost of examination and issuance of certificate. The registration fee for professional engineers also qualified as land surveyors shall be the same as for professional engineers.

Should the board deny the issuance of a certificate of registration to any applicant, the initial fee deposited shall be retained as an application fee. [1975 1st ex.s. c 30 § 46; 1947 c 283 § 8; Rem. Supp. 1947 § 8306-25. Prior: 1935 c 167 § 6; RRS § 8306-6.]

**18.43.060 Examinations.** When oral or written examinations are required, they shall be held at such time and place as the board shall determine. If examinations are required on fundamental engineering subjects (such as ordinarily given in college curricula) the applicant shall be permitted to take this part of the professional examination prior to his completion of the requisite years of experience in engineering work. The board shall issue to each applicant upon successfully passing the examination in fundamental engineering subjects a certificate stating that he has passed the examination in fundamental engineering subjects and that his name has been recorded as an engineer-in-training.

The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability to design and supervise engineering works so as to insure the safety of life, health and property. Examinations shall be given for the

purpose of determining the qualifications of applicants for registration separately in engineering and in land surveying. A candidate failing an examination may apply for reexamination at the expiration of six months and will be reexamined without payment of additional fees. Subsequent examinations will be granted upon payment of a fee to be determined by the board. [1961 c 142 § 2; 1947 c 283 § 9; Rem. Supp. 1947 § 8306-26. Prior: 1935 c 167 § 7; RRS § 8306-7.]

**18.43.070 Certificates and seals.** The director of licenses shall issue a certificate of registration upon payment of a registration fee as provided for in this chapter, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this chapter. In case of a registered engineer, the certificate shall authorize the practice of "professional engineering" and specify the branch or branches in which specialized, and in case of a registered land surveyor, the certificate shall authorize the practice of "land surveying". In the case of a registered professional engineer also qualified as land surveyor but one certificate shall be issued.

In case of engineer-in-training, the certificate shall state that the applicant has successfully passed the examination in fundamental engineering subjects required by the board and has been enrolled as an "engineer-in-training". All certificates of registration shall show the full name of the registrant, shall have a serial number, and shall be signed by the chairman and the secretary of the board and by the director of licenses.

The issuance of a certificate of registration by the director of licenses shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a registered professional engineer or a registered land surveyor, while the said certificate remains unrevoked and unexpired.

Each registrant hereunder shall upon registration obtain a seal of the design authorized by the board, bearing the registrant's name and the legend "registered professional engineer" or "registered land surveyor". Plans, specifications, plats and reports prepared by the registrant shall be signed, dated, and stamped with said seal or facsimile thereof. Such signature and stamping shall constitute a certification by the registrant that the same was prepared by or under his direct supervision and that to his knowledge and belief the same was prepared in accordance with the requirements of the statute. It shall be unlawful for anyone to stamp or seal any document with said seal or facsimile thereof after the certificate of registrant named thereon has expired or been revoked, unless said certificate shall have been renewed or reissued. [1959 c 297 § 4; 1947 c 283 § 10; Rem. Supp. 1947 § 8306-27. Prior: 1935 c 167 §§ 8, 13; RRS § 8306-8, 13.]

**18.43.080 Expiration and renewals of certificates—Fees (as amended by 1975 c 23).** Certificates of registration, and certificates of authorization and renewals thereof shall expire on the last day of the month of December following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the administrator of the division of professional licensing to notify every person, firm or corporation registered under this chapter, of the date of the expiration of his certificate and the amount of the renewal fee that shall be required for its renewal for one year. Such notice shall be

mailed at least thirty days before the end of December of each year. Renewal may be effected during the month of December by the payment of a fee of fifteen dollars for professional engineer, professional engineer and land surveyor, and fifteen dollars for land surveyor. In case any professional engineer and/or land surveyor registered under this chapter shall fail to pay the renewal fee hereinabove provided for, within ninety days from the date when the same shall become due, the renewal fee shall be the current fee plus an amount equal to one year's fee. [1975 c 23 § 1; 1965 ex.s. c 126 § 1; 1961 c 142 § 3; 1959 c 297 § 5; 1947 c 283 § 11; Rem. Supp. 1947 § 8306-28. Prior: 1935 c 167 § 10; RRS § 8306-10.]

**18.43.080 Expiration and renewals of certificates—Fees (as amended by 1975 1st ex.s. c 30).** Certificates of registration, and certificates of authorization and renewals thereof shall expire on the last day of the month of December following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the administrator of the division of professional licensing to notify every person, firm or corporation registered under this chapter, of the date of the expiration of his certificate and the amount of the renewal fee that shall be required for its renewal for one year. Such notice shall be mailed at least thirty days before the end of December of each year. Renewal may be effected during the month of December by the payment of a fee determined by the director as provided in RCW 43.24-.085 as now or hereafter amended. In case any professional engineer and/or land surveyor registered under this chapter shall fail to pay the renewal fee hereinabove provided for, within ninety days from the date when the same shall become due, the renewal fee shall be the current fee plus an amount equal to one year's fee. [1975 1st ex.s. c 30 § 47; 1965 ex.s. c 126 § 1; 1961 c 142 § 3; 1959 c 297 § 5; 1947 c 283 § 11; Rem. Supp. 1947 § 8306-28. Prior: 1935 c 167 § 10; RRS § 8306-10.]

**Reviser's note:** RCW 18.43.080 was amended twice during the 1975 regular and first extraordinary session of the legislature, each without reference to the other.

For rule of construction concerning sections amended more than once at the same session, see RCW 1.12.025.

**18.43.090 Practitioners at time of act.** Any person who has been an actual resident of this state prior to January 1, 1947, and who shall establish to the satisfaction of the board by affidavits of two professional engineers, registered under this chapter, that he was engaged in the practice of engineering other than civil, electrical, mechanical, structural and hydraulic engineering and/or land surveying as defined by chapter 167, Laws of 1935, one year immediately prior to the taking effect of this chapter, shall be eligible for registration without examination provided he makes application for registration and pays the registration fee of fifteen dollars before January 1, 1948. After January 1, 1948, the director of licenses shall issue certificates of registration only as provided in RCW 18.43.050. All persons holding certificates of registration as professional engineers in civil, electrical, mechanical, structural and hydraulic engineering and/or land surveying under chapter 167, Laws of 1935, at the time this chapter becomes effective shall be automatically registered under this chapter, without issuance of an additional certificate. [1947 c 283 § 12; Rem. Supp. 1947 § 8306-29.]

**18.43.100 Registration of out-of-state applicants—Requirements—Reciprocity.** The board may, upon application therefor, and the payment of a fee determined by the director as provided in RCW 43.24-.085 as now or hereafter amended issue a certificate without further examination as a professional engineer or land surveyor to any person who holds a certificate of qualification of registration issued to him following

examination by proper authority, of any state or territory or possession of the United States, the District of Columbia, or of any foreign country, provided: (1) That the applicant's qualifications meet the requirements of the chapter, and the rules established by the board, (2) that the applicant is in good standing with the licensing agency in said state, territory, possession, district, or foreign country; and (3) that the said state, territory, possession, district, or foreign country gives like consideration on a reciprocal basis to those persons who have been registered by examination in this state. [1975 1st ex.s. c 30 § 48; 1959 c 297 § 6; 1947 c 283 § 13; Rem. Supp. 1947 § 8306-30. Prior: 1935 c 167 § 5; RRS § 8306-5.]

**18.43.105 "Misconduct or malpractice in the practice of engineering" defined.** As used in this chapter "misconduct or malpractice in the practice of engineering" shall include but not be limited to the following:

(1) Offering to pay, paying or accepting, either directly or indirectly, any substantial gift, bribe, or other consideration to influence the award of professional work;

(2) Being wilfully untruthful or deceptive in any professional report, statement or testimony;

(3) Attempting to injure falsely or maliciously, directly or indirectly, the professional reputation, prospects or business of anyone;

(4) Failure to state separately or to charge separately for professional engineering services or land surveying where other services or work are also being performed in connection with the engineering services;

(5) Conviction in any court of any offense involving moral turpitude;

(6) Violation of any provisions of this chapter;

(7) Conflict of interest—Having a financial interest in bidding for or performance of a contract to supply labor or materials for or to construct a project for which employed or retained as an engineer except with the consent of the client or employer after disclosure of such facts; or allowing an interest in any business to affect a decision regarding engineering work for which retained, employed, or called upon to perform;

(8) Nondisclosure—Failure to promptly disclose to a client or employer any interest in a business which may compete with or affect the business of the client or employer;

(9) Unfair competition—Reducing a fee quoted for prospective employment or retainer as an engineer after being informed of the fee quoted by another engineer for the same employment or retainer;

(10) Improper advertising—Soliciting retainer or employment by advertisement which is undignified, self-laudatory, false or misleading, or which makes or invites comparison between the advertiser and other engineers;

(11) Committing any other act, or failing to act, which act or failure are customarily regarded as being contrary to the accepted professional conduct or standard generally expected of those practicing professional engineering or land surveying. [1961 c 142 § 4; 1959 c 297 § 2.]

**18.43.110 Revocations.** The board shall have the exclusive power to revoke the certificate of registration of any registrant who is found guilty of:

The practice of any fraud or deceit in obtaining a certificate of registration; or

Any gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered engineer or land surveyor.

Any person may prefer charges of fraud, deceit, gross negligence, incompetency, or misconduct against any registrant. Such charges shall be in writing and shall be sworn to by the person making them and shall be filed with the secretary of the board.

All charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within three months after the date on which they have been preferred.

The time and place for said hearing shall be fixed by the board and a copy of the charges, together with a notice of the time and place of hearing, shall be personally served on or mailed to the last known address of such registrant, at least thirty days before the date set for the hearing. At any hearing the accused registrant shall have the right to appear personally and by counsel, to cross-examine witnesses appearing against him, and to produce evidence and witnesses in his own defense.

If, after such hearing, three or more members of the board vote in favor of finding the accused guilty, the board shall revoke the certificate of registration of such registered professional engineer or land surveyor.

The board, for reasons it deems sufficient, may reissue a certificate of registration to any person whose certificate has been revoked, providing three or more members of the board vote in favor of such issuance. A new certificate of registration to replace any certificate revoked, lost, destroyed, or mutilated may be issued by the director, subject to the rules of the board, and a charge determined by the director as provided in RCW 43.24.085 as now or hereafter amended shall be made for such issuance.

Any person who shall feel aggrieved by any action of the board in denying or revoking his certificate of registration may appeal therefrom to the superior court of the county in which such person resides, and after full hearing, said court shall make such decree sustaining or revoking the action of the board as it may deem just and proper. [1975 1st ex.s. c 30 § 49; 1947 c 283 § 14; Rem. Supp. 1947 § 8306-31. Prior: 1935 c 167 § 11; RRS § 8306-11.]

**18.43.120 Violations and penalties.** Any person who shall practice, or offer to practice, engineering or land surveying in this state without being registered in accordance with the provisions of the chapter, or any person presenting or attempting to use as his own the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate of registration, or any person who shall falsely impersonate any other registrant, or any person who shall attempt to use the expired or revoked certificate of registration, or any person who shall violate any

of the provisions of this chapter shall be guilty of a misdemeanor.

It shall be the duty of all officers of the state or any political subdivision thereof, to enforce the provisions of this chapter. The attorney general shall act as legal adviser of the board, and render such legal assistance as may be necessary in carrying out the provisions of this chapter. [1947 c 283 § 15; Rem. Supp. 1947 § 8306-32. Prior: 1935 c 167 § 14; RRS § 8306-14.]

*Forgery: 9A.60.020.*

**18.43.130 Excepted services—Fees.** This chapter shall not be construed to prevent or affect:

(1) The practice of any other legally recognized profession or trade; or

(2) The practice of a person not a resident and having no established place of business in this state, practicing or offering to practice herein the profession of engineering or land surveying, when such practice does not exceed in the aggregate more than thirty days in any calendar year: *Provided*, Such person is legally qualified by registration to practice the said profession in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this chapter; or

(3) The practice of a person not a resident and having no established place of business in this state, or who has recently become a resident thereof, practicing or offering to practice herein for more than thirty days in any calendar year the profession of engineering or land surveying, if he shall have filed with the board an application for a certificate of registration and shall have paid the fee required by this chapter: *Provided*, That such person is legally qualified by registration to practice engineering or land surveying in his own state or country in which the requirements and qualifications of obtaining a certificate of registration are not lower than those specified in this chapter. Such practice shall continue only for such time as the board requires for the consideration of the application for registration; or

(4) The work of an employee or a subordinate of a person holding a certificate of registration under this chapter, or an employee of a person practicing lawfully under provisions of this section: *Provided*, That such work does not include final design or decisions and is done under the direct responsibility, checking, and supervision of a person holding a certificate of registration under this chapter or a person practicing lawfully under the provisions of this section; or

(5) The work of a person rendering engineering or land surveying services to a corporation, as an employee of such corporation, when such services are rendered in carrying on the general business of the corporation and such general business does not consist, either wholly or in part, of the rendering of engineering services to the general public: *Provided*, That such corporation employs at least one person holding a certificate of registration under this chapter or practicing lawfully under the provisions of this chapter; or

(6) The practice of officers or employees of the government of the United States while engaged within the



state in the practice of the profession of engineering or land surveying for said government; or

(7) Nonresident engineers employed for the purpose of making engineering examinations; or

(8) The practice of engineering in this state by a corporation or joint stock association: *Provided, That*

(a) Such corporation shall file with the board an application for certificate of authorization upon a form to be prescribed by the board and containing information required to enable the board to determine whether such corporation is qualified in accordance with the provisions of this chapter to practice engineering in this state;

(b) Such corporation shall file with the board a certified copy of a resolution of the board of directors of the corporation which shall designate a person holding a certificate of registration under this chapter as responsible for the practice of engineering by said corporation in this state and shall provide that full authority to make all final engineering decisions on behalf of said corporation with respect to work performed by the corporation in this state shall be granted and delegated by the board of directors to the person so designated in said resolution: *Provided, That* the filing of such resolution shall not relieve the corporation of any responsibility or liability imposed upon it by law or by contract;

(c) Such corporation shall file with the board a designation in writing, setting forth the name or names of a person or persons holding certificates of registration under this chapter who shall be in responsible charge of each project and each major branch of the engineering activities in which the corporation shall specialize in this state. In the event there shall be a change in the person or persons in responsible charge of any project or major branch of the engineering activities, such changes shall be designated in writing and filed with the board within thirty days after the effective date of such changes;

(d) Upon the filing with the board of the application for certificate for authorization, certified copy of resolution, affidavit and designation of persons specified in subparagraphs (a), (b), and (c) of this section the board shall issue to such corporation a certificate of authorization to practice engineering in this state upon a determination by the board (1) that:

(i) The bylaws of the corporation contain provisions that all engineering decisions pertaining to any project or engineering activities in this state shall be made by the specified engineer in responsible charge, or other responsible engineers under his direction or supervision;

(ii) The application for certificate of authorization states the type, or types, of engineering practiced, or to be practiced by such corporation;

(iii) A current certified financial statement accurately reflecting the financial condition of the corporation has been filed with the board and is available for public inspection;

(iv) The applicant corporation has the ability to provide through qualified engineering personnel, professional services or creative work requiring engineering experience, and that with respect to the engineering services which the corporation undertakes or offers to

undertake such personnel have the ability to apply special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects;

(v) The application for certificate of authorization states the professional records of the designated person or persons who shall be in responsible charge of each project and each major branch of engineering activities in which the corporation shall specialize;

(vi) The application for certificate of authorization states the experience of the corporation, if any, in furnishing engineering services during the preceding five year period and states the experience of the corporation, if any, in the furnishing of all feasibility and advisory studies made within the state of Washington;

(vii) The applicant corporation meets such other requirements related to professional competence in the furnishing of engineering services as may be established and promulgated by the board in furtherance of the objectives and provisions of this chapter; and

(2) Upon a determination by the board based upon an evaluation of the foregoing findings and information that the applicant corporation is possessed of the ability and competence to furnish engineering services in the public interest.

The board may in the exercise of its discretion refuse to issue or may suspend and/or revoke a certificate of authorization to a corporation where the board shall find that any of the officers, directors, incorporators, or the stockholders holding a majority of stock of such corporation has committed misconduct or malpractice as defined in RCW 18.43.105 or has been found personally responsible for misconduct or malpractice under the provisions of subsections (f) and (g) hereof.

The certificate of authorization shall specify the major branches of engineering of which the corporation has designated a person or persons in responsible charge as provided in subsection (8) (c) of this section.

(e) In the event a corporation, organized solely by a group of engineers, each holding a certificate of registration under this chapter, applies for a certificate of authorization, the board may, in its discretion, grant a certificate of authorization to such corporation based on a review of the professional records of such incorporators, in lieu of the required qualifications set forth in this subsection. In the event the ownership of such corporation shall be altered, the corporation shall apply for a revised certificate of authorization, based upon the professional records of the owners, if exclusively engineers or, otherwise, under the qualifications required by subparagraphs (a), (b), (c), and (d) hereof.

(f) Any corporation authorized to practice engineering under this chapter, together with its directors and officers for their own individual acts, are responsible to the same degree as an individual registered engineer, and



must conduct its business without misconduct or malpractice in the practice of engineering as defined in this chapter.

(g) Any corporation which has been duly certified under the provisions of this chapter and has engaged in the practice of engineering shall have its certificate of authorization either suspended or revoked by the board if, after a proper hearing, the board shall find that the corporation has committed misconduct or malpractice as defined in RCW 18.43.105. In such case any individual engineer holding a certificate of registration under this chapter, involved in such malpractice or misconduct, shall have his certificate of registration suspended or revoked also.

(h) All plans, specifications, designs, and reports when issued in connection with work performed by a corporation under its certificate of authorization shall be prepared by or under the responsible charge of and shall be signed by and shall be stamped with the official seal of a person holding a certificate of registration under this chapter.

(i) For each certificate of authorization issued under the provisions of this subsection (8) of this section there shall be paid an initial fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended and an annual renewal fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended.

(9) The practice of engineering and/or land surveying in this state by partnership: *Provided*, That

(a) A majority of the members of the partnership are engineers or architects or land surveyors duly certificated by the state of Washington or by a state, territory, possession, district, or foreign country meeting the reciprocal provisions of RCW 18.43.100: *Provided*, That at least one of the members is a professional engineer or land surveyor holding a certificate issued by the director under the provisions of RCW 18.43.070; and

(b) Except where all members of the partnership are professional engineers or land surveyors or a combination of professional engineers and land surveyors or where all members of the partnership are either professional engineers or land surveyors in combination with an architect or architects all of which are holding certificates of qualification therefor issued under the laws of the state of Washington, the partnership shall file with the board an instrument executed by a partner on behalf of the partnership designating the persons responsible for the practice of engineering by the partnership in this state and in all other respects such person so designated and such partnership shall meet the same qualifications and shall be subject to the same requirements and the same penalties as those pertaining to corporations and to the responsible persons designated by corporations as provided in subsection (8) of this section.

For each certificate of authorization issued under the provisions of this subsection (9) of this section there shall be paid an initial fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended and an annual renewal fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. [1975 1st ex.s. c 30 § 50; 1965 ex.s. c

126 § 2; 1961 c 142 § 5; 1959 c 297 § 7; 1947 c 283 § 16; Rem. Supp. 1947 § 8306-33. Prior: 1935 c 167 § 2; RRS § 8306-2.]

**18.43.140 Injunctive relief, proof—Board's immunity from liability—Prosecutions.** The board is authorized to apply for relief by injunction without bond, to restrain a person from the commission of any act which is prohibited by this chapter. In such proceedings, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation thereof. The members of the board shall not be personally liable for their action in any such proceeding or in any other proceeding instituted by the board under the provisions of this chapter. The board in any proper case shall cause prosecution to be instituted in any county or counties where any violation of this chapter occurs, and shall aid in the prosecution of the violator. [1959 c 297 § 3.]

**18.43.150 Disposition of fees.** All fees collected under the provisions of RCW 18.43.050, 18.43.080 and 18.43.130 shall be divided and twenty percent paid into the state general fund and eighty percent paid into the professional engineers' account of the state general fund, which account is hereby established to be used to carry out the purposes and provisions of RCW 18.43.050, 18.43.060, 18.43.080, 18.43.100, 18.43.110, 18.43.120, 18.43.130, 18.43.140 and all other duties required for operation and enforcement of this chapter. [1965 ex.s. c 126 § 3.]

**18.43.900 Short title.** This chapter shall be known and may be cited as the "Professional Engineers' Registration Act". [1947 c 283 § 19.]

**18.43.910 Severability—1947 c 283.** If any section of this chapter shall be declared unconstitutional or invalid, such adjudication shall not invalidate any other provision or provisions thereof. [1947 c 283 § 17.]

**18.43.920 Severability—1959 c 297.** If any section of this act or part thereof shall be declared unconstitutional or invalid, such adjudication shall not invalidate any other provision or provisions thereof. [1959 c 297 § 8.]

**18.43.930 Severability—1961 c 142.** If any section of this act or part thereof shall be adjudged unconstitutional or invalid, such adjudication shall not invalidate any other provision or provisions thereof. [1961 c 142 § 6.]

## Chapter 18.44

### ESCROW AGENT REGISTRATION ACT

#### Sections

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**18.44.010 Definitions.** Unless the context otherwise requires terms used in this chapter shall have the following meanings:

(1) "Department" means the department of motor vehicles.

(2) "Director" means the director of the department of motor vehicles, or his duly authorized representative.

(3) "Escrow" means any transaction wherein any person or persons, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property to another person or persons, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition or conditions, when it is then to be delivered by such third person, in compliance with instructions under which he is to act, to a grantee, grantor, promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor, or any agent or employee thereof.

(4) "Escrow agent" means any person engaged in the business of performing for compensation the duties of the third person referred to in RCW 18.44.010(3) above.

(5) "Certificated escrow agent" means any person holding a certificate of registration as an escrow agent under the provisions of this chapter, including corporations, firms, copartnerships and sole proprietors.

(6) "Person" unless a different meaning appears from the context, includes an individual, a firm, association, partnership or corporation, or the plural thereof, whether resident, nonresident, citizen or not.

(7) "Escrow officer" means any natural person handling escrow transactions and licensed as such by the director. [1971 ex.s. c 245 § 1; 1965 c 153 § 1.]

#### **18.44.020 Registration—Required—Exceptions.**

It shall be unlawful for any person to engage in business as an escrow agent within this state unless such person has been registered with the department and issued a certificate of registration by the director pursuant to this chapter: *Provided*, That the registration and licensing requirements of this chapter shall not apply to:

(1) Any person doing business under the law of this state or the United States relating to banks, trust companies, mutual savings banks, savings and loan associations, credit unions, insurance companies, title insurance companies, the duly authorized agents of title insurance companies the business of which agents is exclusively devoted to the title insurance business, or any federally approved agency or lending institution under the National Housing Act.

(2) Any person licensed to practice law in this state while engaged in the performance of his professional duties.

(3) Any company, broker, or agent subject to the jurisdiction of the director while performing acts in the course of or incidental to sales or purchases of real or personal property handled or negotiated by such company, broker, or agent: *Provided, however*, That no compensation is received for escrow services.

(4) Any transaction in which money or other property is paid to, deposited with, or transferred to a joint control agent for disbursement or use in payment of the cost of labor, material, services, permits, fees, or other items of expense incurred in the construction of improvements upon real property.

(5) Any receiver, trustee in bankruptcy, executor, administrator, guardian, or other person acting under the supervision or order of any superior court of this state or of any federal court. [1971 ex.s. c 245 § 2; 1967 ex.s. c 76 § 1; 1965 c 153 § 2.]

#### **18.44.030 Registration—Application, requisites.**

An application for registration as an escrow agent shall be in writing in such form as is prescribed by the director, and shall be verified on oath by the applicant. If the applicant is a corporation, the application shall include a list of the officers of such corporation, and their addresses; if the applicant is a firm or copartnership, the application shall include a list of the names and addresses of the partners. [1965 c 153 § 3.]

**18.44.040 Registration—Affidavit of good character—Certificate of assumed name—Credit and character report.** Each applicant shall, at the time of applying for registration, file with the director:

(1) Affidavits by any three persons listed in subsections (1) through (3) of RCW 18.44.020, stating that they are acquainted with the applicant or its principal officers and that they believe him to be of good character and reputation.

(2) In the event the applicant is doing business under an assumed name, a certified copy of the certificate of assumed name as filed with the county clerk in the county or counties in which the applicant does business or proposes to do business, as provided in chapter 19.80 RCW

(3) A commercial type credit and character report from a recognized credit reporting bureau satisfactory to the director. [1971 ex.s. c 245 § 3; 1965 c 153 § 4.]

**18.44.050 Bond.** At the time of filing an application as an escrow agent, or any renewal or reinstatement thereof, the applicant shall satisfy the director that it has obtained a fidelity bond providing fidelity coverage on the applicant and on each officer and employee of the applicant engaged in escrow transactions. Such applicant shall keep said bond in effect at all times while his certificate of registration is in effect. Such bond shall be a primary commercial blanket bond or its equivalent as required by the director and written by an insurer authorized to transact surety insurance business in the state of Washington. Such bond shall provide fidelity coverage in the amount of two hundred thousand dollars and may be canceled by the surety upon delivering thirty days written notice to the director and the principal. [1971 ex.s. c 245 § 4; 1965 c 153 § 5.]

**18.44.060 Cancellation of bond, new bond required.** In the event of cancellation of a bond the director shall require the filing of a new bond. Failure to deposit such new bond after notification by the director that one is required shall be sufficient grounds for the suspension or revocation of the certificate of registration. [1965 c 153 § 6.]

**18.44.070 Records and accounts—Segregation of funds.** Every certificated escrow agent shall keep adequate records of all transactions handled by or through him including itemization of all receipts and disbursements of each transaction, which records shall be open to inspection by the director or his authorized representatives.

Every certificated agent shall keep a separate escrow fund account in a recognized Washington state depository authorized to receive funds, in which shall be kept separate and apart and segregated from the agent's own funds, all funds or moneys of clients which are being held by the agent pending the closing of a transaction and such funds shall be deposited not later than the first banking day following receipt thereof.

Violation of this section shall constitute grounds for suspension or revocation of the registration and the certificate thereof of any person under this chapter. [1965 c 153 § 7.]

**18.44.080 Registration fees.** The director shall charge and collect the following fees:

(1) For filing an original or a renewal application for registration as an escrow agent, an annual fee of one hundred dollars for the first office or location and five dollars for each additional office or location.

(2) For filing an original or a renewal application for registration as an escrow officer, an annual fee of fifty dollars.

(3) For filing an application for a duplicate of a certificate of registration lost, stolen, destroyed, or for replacement, five dollars.

(4) All fees received by the director under this chapter shall be paid by him into the state treasury to the credit of the general fund. [1971 ex.s. c 245 § 5; 1965 c 153 § 8.]

**18.44.090 Certificate of registration—Issuance.** Upon the filing of the application for registration as an escrow agent, the affidavits of character, the certificate of assumed name, if appropriate, the acceptance of the bond or other indemnity insurance, and the payment of the filing fee, the director shall issue and deliver to the applicant a certificate of registration to engage in the business of an escrow agent at the location or locations set forth in the certificate or certificates. [1965 c 153 § 9.]

**18.44.100 Certificate of registration—Duration—Posting.** An escrow agent's certificate or registration shall remain in effect until surrendered, revoked, suspended, or until it expires, and shall at all times be kept conspicuously posted in all places of business of the agent. [1965 c 153 § 10.]

**18.44.110 Certificate of registration—Expiration and renewal.** Each escrow agent's certificate shall expire at noon on the thirty-first day of December of any calendar year if it is not renewed on or before the twentieth day of December of such year. Registration may be renewed by filing an application and paying the annual registration fee for the next succeeding calendar year. [1965 c 153 § 11.]

**18.44.120 Certificate of registration—Reinstatement.** An escrow agent's certificate which has not been renewed may be reinstated at any time prior to the thirtieth day of January following its expiration, upon the payment to the director of the annual registration fees then in default and a penalty equal to one-half of the annual registration fees then in default. [1965 c 153 § 12.]

**18.44.130 Termination of certificate does not affect preexisting escrows.** The revocation, suspension, surrender or expiration of an escrow agent's certificate shall not impair or affect preexisting escrows accepted by the agent prior to such revocation, suspension, surrender or expiration. [1965 c 153 § 13.]

**18.44.140 Engaging in business without certificate—Penalty.** Any person required by this chapter to obtain a certificate of registration who engages in business as an escrow agent without applying for and receiving the certificate of registration required by this chapter, or wilfully continues to act as an escrow agent after surrender or revocation of his certificate, is guilty of a misdemeanor punishable by imprisonment for not more than ninety days, or by a fine of not more than two hundred fifty dollars, or by both such fine and imprisonment. [1965 c 153 § 14.]

**Date for initial compliance:** "All persons doing business within this state as an escrow agent as defined in this act, who may be required by this act to register with the department, shall comply with the provisions hereof not later than December 31, 1965." [1965 c 153 § 15.]

**18.44.150 Enforcement officials.** The attorney general and the prosecuting attorneys of the several counties shall be responsible for the enforcement of this chapter. [1965 c 153 § 16.]

**18.44.160 Remedies—Injunction—Revocation or suspension of registration.** Whenever it shall appear that any person, required by this chapter to register with the department, is conducting business as an escrow agent without having applied for and obtained a certificate of registration, or that any certificated escrow agent is conducting business in a manner deemed unsafe or injurious to the public or any party having business relations with such escrow agent as a contracting party to an escrow agreement as defined in RCW 18.44.010, or in violation of any of the provisions of this chapter, the attorney general or the prosecuting attorney of the appropriate county may, after such investigation as may be necessary, apply to the appropriate court for an order enjoining the person from engaging in or continuing to engage in the activity violative of this chapter, and upon a showing that such person has engaged, or is about to engage, in any such activity, a permanent or temporary injunction, restraining order, or other appropriate order may be issued by the court.

Alternatively or in addition, the attorney general or prosecuting attorney of the appropriate county may bring an action in the superior court to revoke or suspend the registration of any person under this chapter for violation of any provision thereof. [1965 c 153 § 17.]

**18.44.170 Remedies—Affecting corporate franchise.** Upon petition by the attorney general, the court may, in its discretion, order the dissolution, or suspension or forfeiture of franchise, of any corporation for repeated or flagrant violation of this chapter or the terms of any order of injunction hereunder. [1965 c 153 § 18.]

**18.44.180 Allegation, proof, of registration prerequisite to action for fee.** No person engaged in the business or acting in the capacity of an escrow agent may bring or maintain any action in any court of this state for the collection or compensation for the performances of any services entered upon after December 31, 1965, for which registration is required under this chapter without alleging and proving that he was a duly certificated escrow agent at the time of commencement of such services. [1965 c 153 § 19.]

**18.44.190 Receivership.** Upon application by the director or any other interested party and upon a showing that the interest of the creditors so requires, the superior court may appoint a receiver to take over, operate, or liquidate any escrow office in this state. [1971 ex.s. c 245 § 6.]

**18.44.200 Escrow officer required for handling transactions—Exceptions.** No escrow agent shall engage in the business of handling escrow transactions unless such transactions are handled by an agent licensed as an "escrow officer": *Provided*, That (1) in the case of a

partnership, one licensed partner may act on behalf of the partnership; (2) in the case of a corporation, one licensed officer thereof may act on behalf of the corporation; and (3) each branch office shall be required to have at least one licensed escrow officer designated by the escrow agent. [1971 ex.s. c 245 § 7.]

**18.44.210 State escrow commission—Created—Members—Terms.** There is established an escrow commission of the state of Washington. The commission shall consist of five members, which shall consist of the director who shall be chairman, and the remaining members shall be appointed by the governor for a term of four years each: *Provided*, That one of such appointees shall be selected from persons designated by the governing authority of the escrow association of Washington, and one shall be selected from designees of the governing authority of the Washington state bar association, and the remaining two members shall be selected from persons engaged in the business of handling escrow transactions: *Provided further*, That for the first term of office, the two members selected at the governor's discretion shall serve for a term of two years each. [1971 ex.s. c 245 § 8.]

**18.44.220 Escrow officers—Examination—Qualifications.** Any person desiring to be an escrow officer shall meet the requirement of RCW 18.44.040 and must successfully pass an examination, be a resident of the state of Washington and furnish such other proof as the director may require concerning his honesty, truthfulness, and good reputation. [1971 ex.s. c 245 § 9.]

**18.44.230 Applicant for examination—Requirements.** No examination will be given unless the applicant has one year within the three years immediately preceding application of full time experience in the handling of escrow transactions or in comparable or allied fields, as may be determined from time to time by the escrow commission; and the applicant must be eighteen years of age or older.

Completion of post high school educational courses of the nature and extent prescribed by the escrow commission may be substituted for the experience requirement. [1973 1st ex.s. c 163 § 1; 1971 ex.s. c 245 § 10.]

**18.44.240 Examination—Subjects—Annual.** The examination given shall encompass the following:

- (1) Appropriate knowledge of the English language, including reading, writing, and arithmetic.
- (2) An understanding of the principles of real estate conveyancing, the general purposes and legal effects of deeds, mortgages, deeds of trust, contracts of sale, exchanges, rental and optional agreements, leases, earnest money agreements, personal property transfers, and encumbrances.
- (3) An understanding of the obligations between principal and agent.
- (4) An understanding of the meaning and nature of encumbrances upon real property.

The examination shall be in such form as prescribed by the director and approved by the commission, and shall be given at least annually.

Upon successful completion of the examination the director shall issue an "escrow officer" license to the applicant which license shall be renewable annually. [1971 ex.s. c 245 § 11.]

**18.44.250 Escrow commission—Educational conferences—Examinations.** The commission shall have the authority to hold educational conferences for the benefit of the industry and shall conduct examinations for licenses as an escrow officer. [1971 ex.s. c 245 § 12.]

**18.44.260 Suspension, revocation or denial of escrow officer license—Grounds.** The director may, upon his own motion, and shall, upon verified complaint in writing by any person, investigate the actions of any licensed escrow officer and may temporarily suspend or permanently revoke or deny such license for any holder who is guilty of the following:

(1) Obtaining a license by means of fraud, misrepresentation, concealment, or through the mistake or inadvertence of the director.

(2) Violating any of the provisions of this chapter or any lawful rules or regulations made by the director pursuant thereto.

(3) A crime against the laws of this or any other state or government, involving moral turpitude or dishonest dealings.

(4) Knowingly committing or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relying upon the word, representation, or conduct of the licensee acts to his injury or damage.

(5) Conversion of any money, contract, deed, note, mortgage, or abstract or other evidence of title to his own use or to the use of his principal or of any other person, when delivered to him in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return any money or contract, deed, note, mortgage, abstract or other evidence of title within thirty days after the owner thereof is entitled thereto, and makes demand therefor, shall be prima facie evidence of such conversion.

(6) Failing, upon demand, to disclose any information within his knowledge to, or to produce any document, book, or record in his possession for inspection of, the director or his authorized representatives acting by authority of law.

(7) Committing any act of fraudulent or dishonest dealing, and a certified copy of the final holding of any court of competent jurisdiction in such matter shall be conclusive evidence in any hearing under this chapter.

(8) Accepting, taking or charging any undisclosed commission, rebate or direct profit on expenditures made for the principal. [1971 ex.s. c 245 § 13.]

**18.44.270 Application of administrative procedure act to revocation, suspension, or refusal to renew proceedings.** The proceedings for revocation or suspension of

a license or refusal to renew a license or accept an application for renewal, and any appeal therefrom or review thereof shall be governed by the provisions of chapter 34.04 RCW. [1971 ex.s. c 245 § 14.]

**18.44.900 Construction—1965 c 153.** Nothing in this chapter shall be so construed as to authorize any escrow agent, or his employees or agents, to engage in the practice of law, and nothing in this chapter shall be so construed as to impose any additional liability on any depository authorized by this chapter and the receipt or acquittance of the persons so paid by such depository shall be a valid and sufficient release and discharge of such depository. [1965 c 153 § 20.]

**18.44.910 Short title.** This chapter shall be known and cited as the "Escrow Agent Registration Act". [1965 c 153 § 21.]

**18.44.920 Severability—1971 ex.s. c 245.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 245 § 15.]

## Chapter 18.45

### FURNITURE AND BEDDING INDUSTRY

#### Sections

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**18.45.010 Definitions.** When used in this chapter, the following terms, words or phrases shall have the following meanings:

"Person" includes individual, copartnership, association, firm, auctioneer, trust and corporation and the agents, employees and servants of any of them.

"Sell" or any of its variants includes any of, or any combination of, the following: Sell, offer or expose for sale, barter, trade, deliver, give away, rent, consign, lease, possess with an intent to sell or dispose of in any other commercial manner. Merchandise found on sales floors or in places from which sales or deliveries are made, shall be assumed to be for sale.

"Department" refers to department of health.

"Director" refers to the director of health or his authorized representatives.

"Annually," or any of its variants, means that period beginning July first of each year and ending June thirtieth of the succeeding year, or any unexpired portion of that period.

"Certificate" means any registration certificate issued by the department of health.

"Upholstered furniture" includes any furniture, including children's furniture, movable or stationary, which

(1) is made or sold with cushions or pillows, loose or attached, or

(2) is itself stuffed or filled in whole or in part with any material, hidden or concealed by fabrics or any other covering, including cushions or pillows belonging to or forming a part thereof, together with the structural units, the filling material and its covering and its container, that can be used as a support for the body of a human being, or his limbs and feet when sitting or resting in an upright or reclining position.

"Bedding" means any quilted pad, packing pad, mattress pad, hammock pad, mattress, comforter, bunk quilt, sleeping bag, box spring, studio couch, pillow, cushion, hassock or any bag or container made of leather, cloth or any other material or any other device that is stuffed or filled in whole or in part with concealed material in addition to the structural units, all of which may be used by any human being for sleeping, resting, or reclining purposes.

"Bedding" also includes pillows which are hereby defined as a bag or a case of cloth filled or stuffed with

feathers, down, kapok, cotton, hair, wool, or other sanitary filling not prohibited by the regulations of this chapter to be used, or that may be used, as a rest or a support for the head in reclining, resting, or sleeping.

"Filling material" means cotton, wool, kapok, feathers, down, or any other material, or any combination thereof, loose or in batting, pads, or any other prefabricated form, concealed or not concealed, to be used, or that may be used, in articles of bedding or upholstered furniture.

"Second-hand" means any material or article of which prior use has been made, and includes used defabricated material, thread, and yarn, not otherwise classed as new by the regulations of this chapter.

Any article of upholstered furniture or bedding is second-hand if it contains any second-hand material in whole or in part.

Any article of upholstered furniture or bedding on sales floors in a private residence or room, which is not separated from living quarters, is second-hand furniture or bedding.

"Manufacturer" means a person who, either by himself or through employees or agents, makes any article of upholstered furniture or bedding in whole or in part, or who does the upholstery or covering of any structural unit or part thereof, using either new or second-hand material.

A "wholesaler" is a person who sells any article of upholstered furniture or bedding or filling material to another for purpose of resale.

A "retailer" is a person who sells any article of upholstered furniture or bedding or filling material to a consumer or user of the article purchased.

"Repairer" or "renovator" means a person who repairs, makes over, recovers, restores, renovates, or renews upholstered furniture or bedding.

"Transient repairer or renovator" means any person who travels from place to place and repairs upholstered furniture or renovates bedding with or without benefit of mobile facilities but who has no permanent shop or address.

"Sterilizer" means any person certified by the department to sterilize any upholstered furniture, bedding, or filling material relating thereto.

"Fumigator" means any person certified by the department to fumigate any article of upholstered furniture or bedding or filling material relating thereto.

"Supply dealer" means any person certified by the department to manufacture, process, or sell at wholesale any felt, padding, pads, or loose material in bags or containers, concealed or not concealed, to be used, or that could be used in articles of bedding or upholstered furniture.

"Supply depot" means any warehouse or storeroom used as a merchandising center or supply outlet, to supply, or for the purpose of supplying, merchandise subject to this chapter, either directly or indirectly at wholesale or retail, which merchandise is sold or held for the purpose of sale to any person regardless of whether the purchaser is in business or in the employ of any person.

"Auctioneer" means any person who sells at auction to the highest bidder, either for himself or another party,

at public or private sale, any article or material regulated by this chapter.

"Residence dealer" means any person who sells any new or used article of upholstered furniture or bedding from his own or another person's place of abode or from any salesroom not having a recognized and ordinary store entrance.

"Slip cover" means any casing or cover without any filling material and meeting any of the following requirements:

(1) Which is for use or is to be placed on or over any manufactured article or upholstered furniture or bedding;

(2) Which covers or conceals the upholstered furniture or bedding in whole or in part;

(3) Which is closed or held in place by snaps or hooks and eyes or lacing so that it may be removed without the use of tools or instruments;

(4) Which is not permanently attached by tacking, sewing, or in any other manner.

Any person engaged exclusively in the manufacture of slip covers shall not be required to have a certificate under the provisions of this chapter.

"Branch" means any subordinate establishment situated apart from the parent house, maintaining a separate service to the trade.

"Owner's own material" means any article or material belonging to any person for his own or his tenant's use that is sent to any manufacturer, repairer or renovator to be repaired or renovated or used in repairing or renovating. [1951 c 183 § 1. Prior: 1931 c 125 § 1; RRS § 6294-1.]

**Reviser's note:** The powers, duties, and functions of the department of health were transferred to the department of social and health services. See RCW 43.20A.030.

**18.45.020 Administration of chapter.** The director shall administer this chapter. [1951 c 183 § 2. Prior: 1931 c 125 § 17; RRS § 6294-17.]

**18.45.030 Certificate required.** It shall be unlawful for any person to engage in a business regulated by this chapter unless he has first obtained the proper certificate as required by this chapter. [1951 c 183 § 3.]

**18.45.040 Persons who are required to have certificates.** Except as otherwise provided in this chapter, a person who advertises, solicits, or contracts to manufacture, repair, or renovate upholstered furniture or bedding and either does the work himself or employs others to do it for him, shall secure the particular certificate required by this chapter for the particular type of work that he solicits or advertises that he will do, regardless of whether he has a shop or factory. [1951 c 183 § 4.]

**18.45.050 Manufacturer's certificate.** Every person manufacturing either upholstered furniture, or bedding, or both, shall annually obtain a furniture and bedding manufacturer's certificate from the department bearing a registration number assigned by the department. [1951 c 183 § 5.]

**18.45.060 Wholesale dealer's certificate.** A wholesaler of either upholstered furniture, or bedding, or both, unless he holds a furniture and bedding manufacturer's certificate, shall annually obtain a wholesale furniture dealer's certificate from the department. [1951 c 183 § 6.]

**18.45.070 Repairer's and renovator's certificate.** Every person repairing upholstered furniture or renovating bedding, unless he holds a furniture and bedding manufacturer's certificate, shall annually obtain a repairer's and renovator's certificate from the department bearing a registration number assigned by the department. [1951 c 183 § 7.]

**18.45.080 Retail dealer's certificate.** Every person selling any upholstered furniture or bedding at retail, including upholstered antique furniture, regardless of its condition, unless he holds a furniture and bedding manufacturer's certificate, a wholesale furniture and bedding manufacturer's certificate, a wholesale furniture and bedding dealer's certificate, or a repairer's and renovator's certificate, shall annually obtain a retail furniture and bedding dealer's certificate from the department. This does not apply to upholstered furniture or bedding sold by a peace officer when so ordered by a court: *Provided*, That the provisions of this section and of RCW 18.45.070 shall not apply to any person repairing and/or selling the furnishings of his own household. [1951 c 183 § 8.]

**18.45.090 Supply dealer's certificate.** Every person manufacturing, processing, or selling at wholesale any felt or batting or any pads or loose material in bags or containers for use in bedding or upholstered furniture, unless he holds a furniture and bedding manufacturer's certificate, shall annually procure a supply dealer's certificate from the department bearing a registration number assigned by the department. Each and every branch is likewise subject to the provisions of this chapter. [1951 c 183 § 9.]

**18.45.100 Sterilizing, fumigating business—Certificate required.** No person shall engage in the business of sterilizing, fumigating, or otherwise treating articles or materials subject to the regulations of this chapter without first obtaining the proper registration certificate. [1951 c 183 § 32.]

**18.45.110 Branches—Separate certificate required—Out-of-state factories.** Every person in any class shall secure a separate certificate for each branch. But one whose manufacturing plant is located in another state or foreign country and who is certified to manufacture upholstered furniture or bedding for sale in Washington, may have one wholesale outlet covered by the certificate issued to the factory. [1951 c 183 § 10.]

**18.45.120 Firm names—Additional registration.** Every person doing business at the same address under more than one firm name is subject to the registration provisions for each firm name. [1951 c 183 § 11.]



**18.45.130 Fees for certificates.** The annual registration fee for such certificates granted under this chapter shall be in accordance with the following table and shall be due and payable on or before July 1st of each year:

Furniture and bedding manufacturer's certificate .....	\$35
Wholesale furniture and bedding dealer's certificate .....	\$35
Supply dealer's certificate .....	\$35
Supply depot .....	\$35
Furniture repairer's and renovator's certificate .....	\$25
Sterilizer's or fumigator's certificate .....	\$25
Retail furniture and bedding dealer's certificate .....	\$10
Auctioneer's certificate .....	\$10

The schedule of fees prescribed in this chapter constitutes a maximum, and the secretary of the department of social and health services, or his designee may make a proportionate reduction in the schedule for any year upon the basis of the department's needs for the proper enforcement of this chapter. [1971 ex.s. c 189 § 4; 1951 c 183 § 41.]

**18.45.140 Fees—Payment—Prorated fees.** All registration fees shall be paid in full up to the following July 1st. Prorated license fees shall be on a quarterly basis beginning as of July 1st, October 1st, January 1st, April 1st. [1951 c 183 § 42.]

**18.45.150 Fees—Prorated basis.** Any person not licensed during the last preceding fiscal year may obtain a certificate on the prorated basis by payment of the registration certificate fee beginning the quarter in which he engages in business. [1951 c 183 § 43.]

**18.45.160 Fees—Renewal—Delinquency—Penalty.** Renewal registration fees are payable on or before July 1st. When such fees are not paid in full before September 1st they shall become delinquent and there shall be added to the requisite fee a penalty of twenty percent. If such fee and delinquent penalty are not paid on or before October 1st the licensee shall be subject to such further penalties as provided elsewhere in this chapter. [1951 c 183 § 44.]

**18.45.170 Reciprocity with other states.** The department may reciprocate with other states regarding the mutual recognition and acceptance of labels in interstate commerce, the recognition of manufacturer-shipper identification numerals, and in such other manner as may be consistent with the best interests of the state of Washington. [1951 c 183 § 12.]

**18.45.180 Assignment of registration numbers.** The department shall prescribe the procedure relative to assignment or reassignment of registration numbers. [1951 c 183 § 13.]

**18.45.190 Articles for sale outside state—Application of chapter.** This chapter shall not apply to upholstered furniture or bedding manufactured,

repaired, or renovated which is for sale outside the borders of this state, except that if such articles when manufactured, repaired or renovated, contain in whole or in part, second-hand materials, such articles shall first be sterilized, fumigated, or otherwise treated as required by this chapter. [1951 c 183 § 14.]

**18.45.200 Imported second-hand articles or materials must comply.** Second-hand upholstered furniture or bedding, or second-hand filling materials to be used, or that may be used, in upholstered furniture or bedding, received from outside of this state shall comply with all of the provisions of this chapter before being accepted, sold or delivered, either directly or indirectly by any person. [1951 c 183 § 15.]

**18.45.210 Unlabeled foreign-made articles must comply.** Every person importing or selling either at wholesale or retail, directly or indirectly, any unlabeled foreign-made upholstered furniture or bedding, shall fully comply with all the requirements of this chapter, including the registration and labeling provisions before any such upholstered furniture or bedding can be offered or exposed for sale. [1951 c 183 § 16.]

**18.45.220 Labeling required.** A person shall not, at wholesale or retail or otherwise, directly or indirectly make, repair, renovate, or sell any upholstered furniture or bedding for use in any household or place of abode which can be used by human beings, if it is made of new or second-hand material which is concealed by fabric or any other covering, unless such article is plainly and indelibly stamped or labeled with a tag or other marking as provided in this chapter and approved by the department. The presence of any article or material regulated by this chapter on sales floors or premises from which sales or deliveries are made shall be presumptive evidence of intent to sell or use. [1951 c 183 § 17. Prior: 1931 c 125 § 4; RRS § 6294-4.]

**18.45.230 Labels—Size and contents.** Labels to be attached to articles of upholstered furniture and bedding regulated by this chapter shall not be less than six square inches in size and shall show or state that the filling material is "new," "second-hand," or "owner's own," as the case may be. [1951 c 183 § 19. Prior: 1931 c 125 § 4; RRS § 6294-4.]

**18.45.240 Labels—Descriptions and information—Format.** Filling materials shall be described by true name and grade. When more than one kind or grade is used in a mixture the component parts shall be described in order of their predominance. Feather and down contents shall be shown by percentage. The manner of describing the various filling materials, including the language required by law, together with such other descriptive information as may be required, and the type size, placement and the color of ink thereof, shall be prescribed by the department. In addition to the prescribed language appearing on the label, the label shall

show or state the registration number of the manufacturer as assigned by the department. [1951 c 183 § 20. Prior: 1931 c 125 § 5; RRS § 6294-5.]

**18.45.250 Labels—Additional information—Affixing.** If desired, the label may also describe the frame, cover, and style of the article to which it is attached. When such descriptive statements are made they must, in fact, be true statements. Before display, sale, or delivery of any articles of upholstered furniture or bedding, all labels required by this chapter shall be securely attached to the article at the factory or shop. Such labels shall be fixed in such position that they may be conveniently examined. [1951 c 183 § 21.]

**18.45.260 Labels—Pillows, quilts, cushions—Stamp in lieu of label.** The finished size of bed pillows shall be stated on the label. Quilt and comforter labels shall show the "cut" size on the label and a reasonable tolerance from the "cut" size measurement shall be established by regulation. Labels appearing upon decorative pillows, boudoir and fancy cushions, need not show the finished size. Slip-seat chairs and benches or upholstered stools and similar articles of upholstered furniture, having a wood or metal bottom, may be clearly and indelibly stamped at the factory in lieu of the label. The stamp to be used shall not be smaller than the minimum size approved by the department. When a stamp is approved in lieu of a label, such stamp shall show or state such information as would be required on the label which it replaces. [1951 c 183 § 22.]

**18.45.270 Labels—Filling materials sold separately.** Before being sold, offered, or exposed for sale, cotton, wool, kapok, feathers, down, or any other material or any combination thereof, loose, in batting, pad, or any other prefabricated form, concealed or not concealed, to be used, or that could be used, in articles of bedding or upholstered furniture, shall be labeled with a tag or other device setting forth its true content in accordance with this chapter. [1951 c 183 § 23.]

**18.45.280 Labels—Feathers and down.** All feathers and down, excepting raw stocks sold in bulk or package, shall be labeled with a tag or other marking upon each and every parcel setting forth the true contents according to the requirements of this chapter. [1951 c 183 § 24.]

**18.45.290 Labels—"Bat", "batting", "felt"—Description.** Whenever the words "bat," "batting," or "felt" are used in any statement required by this chapter, the material designated shall be in layers as processed by garnetting or carding machines and the statement on the label shall indicate whether the bat is a "staple cotton bat" or a "cotton linters bat," or such other true statement as may be in order. [1951 c 183 § 36.]

**18.45.300 Labels—"Owner's own material".** Any person who renovates or repairs upholstered furniture or bedding for such owner's or customer's own use or use

by his tenants, shall attach, when completed, the "owner's own material" label approved by the department. [1951 c 183 § 25.]

**18.45.310 Labels—"Owner's own material"—Affixing.** The "owner's own material" label shall be securely attached to the article at the factory or shop and it shall be fixed in such position that it may be conveniently examined. [1951 c 183 § 26.]

**18.45.320 Labels—Must be made of good fabric.** The material from which furniture and bedding labels are made shall be a fabric of good quality approved by the department. [1951 c 183 § 27.]

**18.45.330 Labels—Covering statements prohibited.** No mark, tag or sticker, or any other device shall be placed upon labels required hereby by any person in such a way as to cover the statements required by law. [1951 c 183 § 28.]

**18.45.340 Labels—Misleading terms prohibited.** It shall be unlawful to use on any label any misleading term or designation or term or designation likely to mislead. [1951 c 183 § 29. Prior: 1931 c 125 § 8; RRS § 6294-8.]

**18.45.350 Labels—Misrepresentations—Penalty.** Every person who uses the required furniture and bedding label coming under the provisions of this chapter or who uses any other type of tag or device to falsely advertise or misrepresent any merchandise to which the bedding or furniture label is required to be attached is guilty of a violation of this chapter. [1951 c 183 § 35.]

*False advertising: Chapter 9.04 RCW.*

**18.45.360 Labels—Removal, defacement, alteration—Penalty.** Every person except the purchaser for his own use, who attempts to or does remove, deface, alter, or causes to be removed, defaced or altered, the label or any mark or statement placed upon any upholstered furniture, bedding, or material under the provisions of this chapter, is guilty of a violation of this chapter. [1951 c 183 § 30. Prior: 1931 c 125 § 11; RRS § 6294-11.]

**18.45.370 Repair or renovation—Identification tag.** Every person, upon receiving upholstered furniture or bedding for repair or renovation, shall securely affix immediately a tag of identification showing the owner's or dealer's name and address and the date upon which it was received. The tag shall remain affixed until actual repair or renovation is begun. Second-hand springs, structural parts and filling materials shall likewise be identified. [1951 c 183 § 39.]

**18.45.380 Filthy articles, bedding—Sale prohibited.** Filthy articles of upholstered furniture or filthy articles of bedding cannot be sold, offered for sale, or exposed for sale. [1951 c 183 § 31. Prior: 1931 c 125 § 12; RRS § 6294-12.]

*Sale or use of shoddy, penalty: Chapter 70.70 RCW.*

**18.45.390 Filling material must be clean.** Any and all filling material to be used in the manufacture of upholstered furniture or bedding shall be free from foreign matter, dirt or trash. [1951 c 183 § 37.]

*Sale or use of shoddy: Chapter 70.70 RCW.*

**18.45.400 Clean premises, equipment, etc., required.** The premises, delivery equipment, machinery, appliances and devices of all persons under this chapter shall at all times be kept free of refuse, dirt, contamination, insects or vermin. [1951 c 183 § 40.]

**18.45.410 Sterilization of second-hand articles and materials.** A person shall not, directly or indirectly, sell in this state, at wholesale or retail or otherwise, any second-hand or previously used article or upholstered furniture or bedding or any second-hand or previously used filling material to be used, or that could be used in the manufacture, repair, or renovation thereof, unless such article or material has, subsequent to its last use, been sterilized, fumigated, or otherwise treated by a process approved by the department and labeled in accordance with the provisions of this chapter. [1951 c 183 § 18. Prior: 1931 c 125 § 12; RRS § 6294-12.]

*Sale or use of shoddy: Chapter 70.70 RCW.*

**18.45.420 Sterilization—Furniture, bedding from public institution or exposed to contagion.** Every article of upholstered furniture or bedding from any private or public hospital, jail, or any other institution, or which has been used by any person suffering from an infectious or contagious disease, shall be sterilized before it is repaired or renovated. [1951 c 183 § 33. Prior: 1931 c 125 § 12; RRS § 6294-12.]

**18.45.430 Sterilized articles must be kept separate from unsterilized.** New, sterilized, fumigated, or otherwise treated articles of upholstered furniture or bedding or materials shall at all times be kept separate from second-hand articles or materials not sterilized, fumigated, or otherwise treated. [1951 c 183 § 34.]

**18.45.440 Inspection of premises, records, materials—Powers of director.** The director shall have access to any premises or to any records held by any person containing any information pertaining to any materials or articles affected by and subject to the provisions of this chapter. They may inspect materials and structural parts intended to be used in the manufacture of upholstered furniture or bedding, may open such articles or parts thereof for the purpose of inspecting concealed filling material and may take either the entire article or samples of filling material in such quantities as may be necessary for laboratory analysis. [1951 c 183 § 46. Prior: 1931 c 125 § 17; RRS § 6294-17.]

*Obstructing public servant: RCW 9A.76.020.*

**18.45.450 Condemnation of articles, materials—Grounds—Disposition.** When the director determines that any second-hand or damaged article of upholstered furniture or bedding for sale, or any materials intended

to be used in the manufacture of any article or articles of upholstered furniture or bedding are detrimental to public health, he may condemn, withhold from sale, seize, or destroy any such article or articles. [1951 c 183 § 47. Prior: 1931 c 125 § 13; RRS § 6294-13.]

**18.45.460 Condemned articles—Tag to be affixed.** The tag to be affixed to any article of condemned upholstered furniture or bedding or any material by a representative shall be a colored tag and shall contain such information as may be required by the department. [1951 c 183 § 48.]

**18.45.470 Condemned articles—Failure to relinquish—Penalty.** The failure of any person to produce upon demand of the director any article or material that has been condemned or ordered held on an inspection notice is a violation of this chapter. [1951 c 183 § 49.]

**18.45.480 Rules and regulations—Standards, labeling, etc.** The state board of health shall by regulation, establish grades, specifications, and tolerances on the kinds and qualities of materials which are used or intended to be used or that may be used in the manufacture of upholstered furniture or bedding, provided such grades, specifications and tolerances are not in conflict with accepted national standards relating thereto, and may approve or adopt standard designations and rules for the proper labeling of articles filled with those materials, provided such rules are not in conflict with any of the provisions of this chapter, and may adopt such other rules and regulations as may be necessary for carrying out the provisions of this chapter. [1951 c 183 § 38.]

**18.45.490 Expenses of administering chapter—Paid from fees—Accounting.** All moneys received under this chapter shall be paid over to the state treasurer at the close of each month. Expenses for carrying out the provisions of this chapter shall be obtained from these moneys. The department shall maintain separate records showing receipt and expenditure of such moneys. [1951 c 183 § 45.]

**18.45.500 Violations—Penalty.** Every person who violates any of the provisions of this chapter is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment in the county jail for not less than thirty days nor more than six months or by both such fine and imprisonment. [1951 c 183 § 50. Prior: 1931 c 125 § 16; RRS § 6294-16.]

**18.45.510 Violations—Each article constitutes separate offense.** The unit for a separate and distinct offense in violation of this chapter is each and every article of improperly labeled, or not labeled, upholstered furniture or bedding made, repaired, recovered, renovated, sterilized, fumigated, or otherwise treated, sold, exposed or offered for sale, delivered, consigned, rented or possessed with intent to sell contrary to the provisions of this chapter. [1951 c 183 § 51.]

**18.45.900 Severability**—1951 c 183. If any provision of this chapter or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or the application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable. [1951 c 183 § 55.]

### Chapter 18.46 MATERNITY HOMES

#### Sections

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*Abortion: Chapter 9.02 RCW.*

*Adoption of children through hospitals, doctors, midwives, etc.: RCW 26.36.040.*

*Crimes relating to pregnancy and childbirth: RCW 9A.32.060.*

*Filing certificate of birth: RCW 70.58.080.*

*Offer or advertising that maternity home, etc., will place child for adoption prohibited: RCW 26.36.040.*

*Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.*

**18.46.005 Purpose.** The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the maintenance and operation of maternity homes, which, in the light of advancing knowledge, will promote safe and adequate care and treatment of the individuals therein. [1951 c 168 § 1.]

**18.46.010 Definitions.** (1) "Maternity home" means any home, place, hospital or institution in which facilities are maintained for the care of four or more women, not related by blood or marriage to the operator, during pregnancy or during or within ten days after delivery: *Provided, however,* That this chapter shall not apply to any hospital approved by the American College of Surgeons, American Osteopathic Association or its successor.

(2) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(3) "Department" means the state department of health.

(4) "Board" means the state board of health. [1951 c 168 § 2. Prior: 1943 c 214 § 1; Rem. Supp. 1943 § 6130-47.]

**Reviser's note:** The powers, duties, and functions of the department of health were transferred to the department of social and health services. See RCW 43.20A.030.

**18.46.020 License required.** After July 1, 1951 no person shall operate a maternity home in this state without a license under this chapter. [1951 c 168 § 3. Prior: 1943 c 214 § 2; Rem. Supp. 1943 § 6130-48.]

**18.46.030 Application for license—Fee.** An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires, which may include affirmative evidence of ability to comply with rules and regulations as are lawfully prescribed hereunder. Each application for license shall be accompanied by a license fee of fifteen dollars plus one dollar per bed capacity per year, but in no event shall the total exceed one hundred dollars: *Provided,* That no fee shall be required of charitable or nonprofit or government-operated institutions. [1951 c 168 § 4.]

**18.46.040 License—Issuance—Renewal—Limitations—Display.** Upon receipt of an application for a license and the license fee, where required, the licensing agency shall issue a license if the applicant and the maternity home facilities meet the requirements established under this chapter. A license, unless suspended or revoked, shall be renewable annually. All licenses issued under the provisions of this chapter shall expire on the first day of July next succeeding the date of issue. Applications for renewal shall be on forms provided by the department and shall be filed in the department not less than ten days prior to its expiration. Each application for renewal shall be accompanied by a license fee of twenty-five dollars. Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises. [1951 c 168 § 5. Prior: 1943 c 214 § 3; Rem. Supp. 1943 § 6130-49.]

**18.46.050 License—Denial, suspension, revocation.** The department after notice and opportunity for hearing to the applicant or licensee is authorized to deny, suspend, or revoke a license in any case in which it finds that there has been failure or refusal to comply with the requirements established under this chapter.

Notice shall be effected by registered mail or by personal service setting forth the particular reasons for the proposed action and fixing a date not less than thirty days from the date of mailing or service at which time the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of such hearing or upon default of the applicant or licensee, the department shall make a determination specifying its findings and conclusions. A copy of the determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending, or denying the license or application shall become final thirty days after it is mailed or served,

unless the applicant or licensee, within such thirty day period, appeals the decision.

The procedure governing hearings authorized by this section shall be in accordance with the rules promulgated by the board. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is appealed. A copy or copies of the transcript may be obtained by any interested party on payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party. [1951 c 168 § 6.]

**18.46.060 Rules and regulations.** The board, after consultation with representatives of maternity home operators, state medical association, Washington Osteopathic Association, state nurses association, state hospital association, and any other representatives as the board may deem necessary, shall adopt, amend, and promulgate such rules and regulations with respect to all maternity homes in the promotion of safe and adequate medical and nursing care of inmates in the maternity home and the sanitary, hygienic and safe condition of the maternity home in the interest of the health, safety and welfare of the people. [1951 c 168 § 7.]

**18.46.070 Rules and regulations—Time for compliance.** Any maternity home which is in operation at the time of promulgation of any applicable rules or regulations under this chapter shall be given a reasonable time, under the particular circumstances, not to exceed three months from the date of such promulgation, to comply with the rules and regulations established under this chapter. [1951 c 168 § 8.]

**18.46.080 Inspection of maternity homes—Approval of new facilities.** The department shall make or cause to be made an inspection and investigation of all maternity homes, and every inspection may include an inspection of every part of the premises. The department may make an examination of all records, methods of administration, the general and special dietary and the stores and methods of supply. The board may prescribe by regulation that any licensee or applicant desiring to make specified types of alteration or addition to its facilities or to construct new facilities shall before commencing such alterations, addition, or new construction submit plans and specifications therefor to the department for preliminary inspection and approval or recommendations with respect to compliance with regulations and standards herein authorized. Necessary conferences and consultations may be provided. [1951 c 168 § 9. Prior: 1943 c 214 § 4; Rem. Supp. 1943 § 6130-50.]

**18.46.090 Information confidential.** All information received by the department through filed reports, inspection, or as otherwise authorized under this chapter shall not be disclosed publicly in any manner as to identify individuals or maternity homes except in a proceeding involving the question of licensure. [1951 c 168 § 10.]

**18.46.100 Appeal from department.** Any applicant or licensee aggrieved by the decision of the department

after a hearing, may, within thirty days after the mailing or serving of notice of the decision, file a notice of appeal in the superior court of the county in which the maternity home is located or to be located, and serve a copy of the notice of appeal upon the department. Thereupon the department shall promptly certify and file with the court a copy of the record and decision, including the transcript of the hearings on which the decision is based.

Findings of fact by the department shall be conclusive unless substantially contrary to the weight of the evidence but upon good cause shown the court may remand the case to the department to take further evidence, and the department may thereupon affirm, reverse, or modify its decision. The court may affirm, or reverse the decision of the department and either the applicant or licensee or the department may apply for further review as is provided by law. Pending final disposition of the matter the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest. [1951 c 168 § 11.]

**18.46.110 Fire protection—Duties of state fire marshal.** Fire protection with respect to all maternity homes to be licensed hereunder, shall be the responsibility of the state fire marshal, who shall adopt by reference, such recognized standards as may be applicable to nursing homes, places of refuge, and maternity homes for the protection of life against the cause and spread of fire and fire hazards. The department upon receipt of an application for a license, shall submit to the state fire marshal in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the state fire marshal or his deputy, shall make an inspection of the maternity home to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as promulgated by the state fire marshal, he shall promptly make a written report to the department as to the manner in which the premises may qualify for a license and set forth the conditions to be remedied with respect to fire regulations. The department, applicant or licensee shall notify the state fire marshal upon completion of any requirements made by him, and the state fire marshal, or his deputy, shall make a reinspection of such premises. Whenever the maternity home to be licensed meets with the approval of the state fire marshal, he shall submit to the department, a written report approving same with respect to fire protection before a license can be issued. The state fire marshal shall make or cause to be made such inspection of such maternity homes as he deems necessary.

In cities which have in force a comprehensive building code, the regulation of which is equal to the minimum standards of the state fire marshal's code for maternity homes, the building inspector and the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection and shall approve the premises before a license can be issued.

In cities where such building codes are in force, the state fire marshal may, upon request by the chief fire official, or the local governing body, or of a taxpayer of

such city, assist in the enforcement of any such code pertaining to maternity homes. [1951 c 168 § 12.]

*State fire marshal: Chapter 48.48 RCW.*

**18.46.120 Operating without license—Penalty.** Any person operating or maintaining any maternity home without a license under this chapter shall be guilty of a misdemeanor. Each day of a continuing violation after conviction shall be considered a separate offense. [1951 c 168 § 13.]

**18.46.130 Operating without license—Injunction.** Notwithstanding the existence or use of any other remedy, the department may in the manner provided by law, upon the advice of the attorney general who shall represent the department in all proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the operation or maintenance of a maternity home not licensed under this chapter. [1951 c 168 § 14.]

*Injunctions: Chapter 7.40 RCW.*

**18.46.140 Application of chapter to homes operated by certain religious organizations.** Nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial and nursing care of residents or patients in any maternity home as defined in this chapter, conducted for or by members of a recognized religious sect, denomination, or organization which in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion, nor shall the existence of any of the above conditions militate against the licensing of such home or institution. [1951 c 168 § 15.]

**18.46.900 Severability—1951 c 168.** If any provision of this chapter or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable. [1951 c 168 § 17.]

## Chapter 18.50 MIDWIFERY

### Sections

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*Reviser's note:* "Director" and "director of licenses" have been substituted for "board", "board of medical examiners" and "secretary of the board" throughout this chapter, since the state board of medical examiners was abolished by 1921 c 7 § 135 and its powers and duties were transferred to the director of licenses by 1921 c 7 § 96 (RCW 43.24.020), which powers and duties subsequently devolved to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest.

*Abortion: Chapter 9.02 RCW.*

*Adoption of children through hospitals, doctors, midwives, etc.: RCW 26.36.040.*

*Crimes relating to pregnancy and childbirth: RCW 9A.32.060.*

*Filing certificate of birth: RCW 70.58.080.*

*Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.*

**18.50.010 Definitions—Gratuitous services—Duty to call physician.** Any person shall be regarded as practicing midwifery within the meaning of this chapter who shall render medical aid to a woman in childbirth for a fee or compensation or who shall advertise as a midwife by signs, printed cards or otherwise. Nothing shall be construed in this chapter to prohibit gratuitous services. It shall be the duty of a midwife to always secure the immediate services of a legally qualified physician whenever any abnormal signs or symptoms appear either in the mother or the infant. [1917 c 160 § 8; RRS § 10181. Formerly RCW 18.50.010, 18.50.030, part, and 18.50.090.]

**18.50.020 License required.** Any person who shall practice midwifery in this state after July 1, 1917, shall first obtain from the director of licenses of the state of Washington a license so to do, and the said director is authorized to grant such license after examination of the applicant as hereinafter provided. [1917 c 160 § 1; RRS § 10174.]

**18.50.030 Exemptions.** This chapter shall not be construed to interfere in any way with the practice of religion, nor be held to apply to or regulate any kind of treatment by prayer. [1917 c 160 § 12; RRS § 10185. FORMER PART OF SECTION: 1917 c 160 § 8, part; RRS § 10181, part, now codified in RCW 18.50.010.]

*Gratuitous services exempted: RCW 18.50.010.*

**18.50.040 Application—Eligibility requirements.** Any person seeking to be examined shall present to the said director, at least ten days before the commencement of the said examination, a written application on a form or forms provided by the said director setting forth under affidavit the name, age, nativity, residence, moral character and time spent in obtaining a common school education or its equivalent; that the candidate has received a certificate or diploma from a legally incorporated school on midwifery in good standing, granted after at least two courses of instruction of at least seven months each in different calendar years or a certificate or diploma in a foreign institution on midwifery of equal requirements conferring the full right to practice midwifery in the country in which it was issued. The diploma must bear the seal of the institution from which the applicant was graduated. Foreign applicants must present with the application a translation of the foreign

certificate or diploma made by and under the seal of the consulate of the country in which the said certificate or diploma was issued. The application must be endorsed by a duly registered reputable physician of the state of Washington. [1917 c 160 § 2; RRS § 10175.]

**18.50.050 Application—Examination fee.** If the application is approved and the candidate shall have deposited an examination fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended with the director, the candidate shall be admitted to the examination, and in case of failure to pass the examination, may be reexamined at any regular examination within one year without the payment of an additional fee, said fee to be retained by the director after failure to pass the second examination. [1975 1st ex.s. c 30 § 51; 1917 c 160 § 3; RRS § 10176.]

**18.50.060 Examination.** The director of licenses is hereby authorized and empowered to execute the provisions of this chapter and shall hold examinations in midwifery on the first Monday in January and July, at such places as the director may select, from ten o'clock a.m. to five o'clock p.m., and at such other times as the said director may deem expedient. The examinations may be oral, written, or both, and shall be in the English language; if desired in any other language, an interpreter may be provided by said director upon notification of the director at least ten days before examination. The cost of said interpreter shall be defrayed by the applicant for the license.

Examinations shall be held on the following subjects:

- (1) Anatomy of pelvis and female genital organs.
- (2) Physiology of menstruation.
- (3) Diagnosis and management of pregnancy.
- (4) Diagnosis of foetal presentation and position.
- (5) Mechanism and management of normal labor.
- (6) Management of puerperium.
- (7) Injuries to the genital organs following labor.
- (8) Sepsis and antisepsis in relation to labor.
- (9) Special care of the bed and lying-in room.
- (10) Hygiene of mother and infant.
- (11) Asphyxiation, convulsions, malformation and infectious diseases of the new-born.
- (12) Causes and effects of ophthalmia neonatorum.
- (13) Abnormal conditions requiring attention of a physician.
- (14) Requirements of the vital statistics laws pertaining to the reporting of births and the rules of the state board of health relative to ophthalmia neonatorum or other infectious diseases of the newborn.

Said examination shall be sufficient to test the scientific and practical fitness of candidates to practice midwifery and the director may require examination on other subjects relating to midwifery from time to time. All application papers shall be deposited with the director and there retained for at least one year, when they may be destroyed.

If said examination is satisfactory, said director shall issue to such candidate a license entitling the candidate to practice midwifery in the state of Washington: *Provided*, That said license shall not authorize the holder to

prescribe any drugs or medicine except some household remedy after the birth of the infant. [1917 c 160 § 4; RRS § 10177.]

**Reviser's note:** The last paragraph of 1917 c 160 § 4 reads: "If said examination is satisfactory, said board shall issue to such candidate a license with the certified copy signed by its president and secretary, and attested by its seal, entitling the candidate to practice midwifery in the state of Washington: *Provided*, That said license shall not authorize the holder to prescribe any drugs or medicine except some household remedy after the birth of the infant." This paragraph has been changed to refer to the "director of licenses" as the board of medical examiners was abolished and its powers and duties transferred to the director of licenses, which powers and duties subsequently devolved to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest.

**18.50.070 Recording license—Penalty for failure.** Every person holding a license authorized in this chapter must have the same recorded in the office of the county clerk in the county in which the holder is practicing her profession, and the fact of such recording shall be endorsed on the certificate by the county clerk recording the same. Every such person, on a change of her residence, must have the license recorded in the county to which she shall have removed. The absence of such record shall be prima facie evidence of the want of possession of such certificate; and any person practicing midwifery in this state without first having filed her certificate with the county clerk as herein provided, shall be deemed guilty of a misdemeanor. [1917 c 160 § 5; RRS § 10178.]

**18.50.080 Recording—County clerk's duties.** The county clerk shall keep in a book provided for the purpose, a complete list of the certificates recorded by him, with the date of the record, and such book shall be open to public inspection during his office hours. [1917 c 160 § 6; RRS § 10179.]

**18.50.100 Refusal and revocation of license—Grounds—Hearing.** Said director may refuse to grant or may revoke any license herein provided for, for any of the following reasons: Persistent inebriety; the practice of criminal abortion; the commission of any crime involving moral turpitude; presentation of a certificate or diploma for registration or license illegally obtained; application for examination under fraudulent misrepresentation; neglect or refusal to make proper returns to the health officer or health department of births or of puerperal contagion or infectious diseases within the required limit of time; failure to record her license with the clerk of the county in which the licentiate resides or practices; failure to secure the attendance of a reputable physician in a case of miscarriage, hemorrhage, abnormal presentation or position, retained placenta, convulsions, prolapse of the cord, fever during parturient stage, inflammation or discharge from the eyes of a new-born infant, or whenever there are any abnormal or unhealthy symptoms in either the mother or the infant during labor or the puerperium.

In complaints of violations of the provisions of this section, the accused shall be furnished with a copy of the complaint and be given a hearing before said director in person or by attorney. Any midwife refused admittance



to the examination or whose license has been revoked who shall attempt or continue the practice of midwifery, shall be subject to the penalties hereinafter prescribed. [1917 c 160 § 7; RRS § 10180. Formerly RCW 18.50.100 and 18.50.110.]

*Abortion: Chapter 9.02 RCW.*

**18.50.120 Unlawful practice—Penalties.** Any person hereafter practicing midwifery in this state without first complying with the provisions of this chapter, shall be guilty of a misdemeanor and shall be punished by fine of not less than fifty dollars nor more than two hundred fifty dollars, or by imprisonment in the county jail for not less than ten days nor more than six months, or both, at the discretion of the court. [1917 c 160 § 9; RRS § 10182.]

**18.50.130 "Certificate" and "license" synonymous.** The words "certificate" and "license" shall be known as interchangeable terms in this chapter. [1917 c 160 § 11; RRS § 10184.]

**18.50.900 Repeal and saving.** All acts or parts of acts inconsistent with the provisions of this chapter may be and the same are hereby repealed: *Provided*, This chapter shall not repeal the provisions of the vital statistics laws of the state, but shall be deemed as additional and cumulative provisions. [1917 c 160 § 10.]

### Chapter 18.51 NURSING HOMES

#### Sections

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- 18.51.240 Alterations or additions—Preliminary inspection and approval.
- 18.51.250 Nursing homes without violations—Public agencies referring patients to be notified—Priority.
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- 18.51.270 Annual report of citations for violations—Publication—Contents.
- 18.51.280 Chapter cumulative.
- 18.51.290 Writings deemed public record—Open to public inspection—Exception.
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- 18.51.900 Severability—1951 c 117.

*Boarding homes: Chapter 18.20 RCW.*

*Labor regulations, collective bargaining—Health care activities: Chapter 49.66 RCW.*

*Maternity homes: Chapter 18.46 RCW.*

**18.51.005 Purpose.** The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the maintenance and operation of nursing homes, which, in the light of advancing knowledge, will promote safe and adequate care and treatment of the individuals therein. An important secondary purpose is the improvement of nursing home practices by educational methods so that such practices eventually exceed the minimum requirements of the basic law and its original standards. [1951 c 117 § 1.]

**18.51.007 Legislative intent—1975 1st ex.s. c 99.** It is the intent of the legislature in enacting \*this 1975 amendatory act to establish (1) a system for the imposition of prompt and effective sanctions against nursing homes in violation of the laws and regulations of this state relating to patient care; (2) an inspection and reporting system to insure that nursing homes are in compliance with state statutes and regulations pertaining to patient care; and (3) a provisional licensing mechanism to insure that full term licenses are issued only to those nursing homes that meet state standards relating to patient care: *Provided*, That no sanction shall be imposed by the department until the department has informed the owner and administrator of the nursing home about the rules and regulations required to be followed to avoid penalties and until the department has granted a reasonable amount of time to the owner and administrator of the nursing home to correct the condition which would result in the penalty. [1975 1st ex.s. c 99 § 3.]

\*Reviser's note: "this 1975 amendatory act" [1975 1st ex.s. c 99] consists of RCW 18.51.007, 18.51.055, 18.51.065, 18.51.190–18.51.290, amendments to RCW 18.51.050 and 18.51.060 and the repeal of RCW 18.51.090, 18.51.120 and 18.51.130.

**18.51.010 Definitions.** (1) "Nursing home" means any home, place or institution which operates or maintains facilities providing convalescent or chronic care, or both, for a period in excess of twenty-four consecutive hours for three or more patients not related by blood or marriage to the operator, who by reason of illness or infirmity, are unable properly to care for themselves. Convalescent and chronic care may include but not be limited to any or all procedures commonly employed in waiting on the sick, such as administration of medicines, preparation of special diets, giving of bedside nursing

care, application of dressings and bandages, and carrying out of treatment prescribed by a duly licensed practitioner of the healing arts. It may also include care of mentally incompetent persons. Nothing in this definition shall be construed to include general hospitals or other places which provide care and treatment for the acutely ill and maintain and operate facilities for major surgery or obstetrics, or both. Nothing in this definition shall be construed to include any boarding home, guest home, hotel or related institution which is held forth to the public as providing, and which is operated to give only board, room and laundry to persons not in need of medical or nursing treatment or supervision except in the case of temporary acute illness. The mere designation by the operator of any place or institution as a hospital, sanitarium, or any other similar name, which does not provide care for the acutely ill and maintain and operate facilities for major surgery or obstetrics, or both, shall not exclude such place or institution from the provisions of this chapter: *Provided*, That any nursing home providing psychiatric treatment shall, with respect to patients receiving such treatment, comply with the provisions of RCW 71.12.560, 71.12.570, and \*71.12.580.

(2) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(3) "Secretary" means the secretary of the department of social and health services.

(4) "Board" means the state board of health.

(5) "Department" means the state department of social and health services.

(6) "Approved health department" means any city, county, city-county or district health department which holds a certificate of approval under this chapter. [1973 1st ex.s. c 108 § 1; 1953 c 160 § 1; 1951 c 117 § 2.]

\*Reviser's note: RCW "71.12.580" was repealed by 1973 c 142 § 66.

**18.51.020 Enforcement by local authorities—Certificate of approval.** Any city, county or district health department, employing a part time or full time health officer, may make application in writing to the director for a certificate of approval authorizing such city, county or district to inspect and conduct investigations of nursing homes within its jurisdiction and with the department jointly issue, deny, suspend or revoke licenses for such nursing homes. Upon receipt of the application the director shall investigate and determine whether the city, county, or district health department is entitled to approval and if so he shall issue the certificate applied for. Any certificate of approval may be canceled by the director after thirty days' notice in writing to the holder of the certificate of approval should it be found that the holder is incompetent or unable to inspect and conduct investigations of nursing homes. [1953 c 160 § 2; 1951 c 117 § 3.]

**18.51.030 License required.** After July 1, 1951 no person shall operate or maintain a nursing home in this state without a license under this chapter. [1951 c 117 § 4.]

**18.51.040 Application for license.** An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires, which may include affirmative evidence of ability to comply with the rules and regulations as are lawfully prescribed hereunder. [1953 c 160 § 3; 1951 c 117 § 5.]

**18.51.050 License, provisional license—Issuance, renewal—Fee—Display.** Upon receipt of an application for license, the department, or the department and the approved health department jointly, shall issue a license or a provisional license if the applicant and the nursing home facilities meet the requirements established under this chapter. At the time of issuance or renewal of the license or provisional license the licensee shall pay a license fee of fifteen dollars plus one dollar per bed capacity per year, but in no event shall the total exceed one hundred dollars. No fee shall be required of government operated institutions. When the license or provisional license is issued jointly by the department and an approved health department, the license fee shall be paid to the approved health department. All licenses issued under the provisions of this chapter shall expire on a date to be set by the board, but no license issued pursuant to this chapter shall exceed twelve months in duration: *Provided*, That when the annual license renewal date of a previously licensed nursing home is set by the board on a date less than twelve months prior to the expiration date of a license in effect at the time of reissuance, the license fee shall be prorated on a monthly basis and a credit be allowed at the first renewal of a license for any period of one month or more covered by the previous license. All applications for renewal of license shall be made not later than thirty days prior to the date of expiration of the license. Each license shall be issued only for the premises and persons named in the application, and no license shall be transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises. [1975 1st ex.s. c 99 § 1; 1971 ex.s. c 247 § 2; 1953 c 160 § 4; 1951 c 117 § 6.]

**18.51.055 Provisional license—When issued—Renewal—Termination.** (1) If a nursing home has not been previously licensed pursuant to this chapter, the department may only provisionally license such facility as provided in this section. A provisional license to operate a nursing home shall terminate six months from the date of issuance. Within thirty days of the termination of a provisional license, the department shall give such facility a full and complete inspection, and, if the facility meets requirements for licensure, a regular license shall be issued. If the nursing home does not meet the requirements for licensure but has made substantial progress towards meeting such requirements, as determined by the department, the initial provisional license shall be renewed for six months. If the department determines that there has not been substantial progress towards meeting licensure requirements at the time of the first full inspection provided by this section, or, if the state department determines upon its inspection made

within thirty days of the termination of a renewed provisional license that there is lack of compliance with such requirements, no further license shall be issued.

(2) A nursing home seeking renewal of a license may, in the discretion of the department, be granted a provisional license under this section instead of a regular license, where there has been a failure to comply with the provisions of this chapter or the standards, rules and regulations promulgated pursuant thereto. [1975 1st ex.s. c 99 § 15.]

**18.51.060 Denial, suspension, revocation of license or provisional license—Penalty.** The department is authorized to deny, suspend, or revoke a license or provisional license or, in lieu thereof or in addition thereto, assess monetary penalties of a civil nature not to exceed five hundred dollars per violation in any case in which it finds that the applicant, or licensee, or any partner, officer, director, owner of ten percent or more of the assets of the nursing home, or managing employee:

(1) Failed or refused to comply with the requirements of this chapter or the standards, rules and regulations established hereunder; or

(2) Was the holder of a license issued pursuant to this chapter, which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled; or

(3) Has knowingly or with reason to know made a false statement of a material fact in his application for license or any data attached thereto, or in any matter under investigation by the department; or

(4) Refused to allow representatives or agents of the department to inspect all books, records, and files required to be maintained or any portion of the premises of the nursing home; or

(5) Wilfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the department and the lawful enforcement of any provision of this chapter; or

(6) Wilfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of this chapter or the standards, rules, and regulations promulgated hereunder; or

(7) Fails to pay any civil monetary penalty assessed by the department pursuant to this chapter within ten days after such assessment becomes final: *Provided*, That in no event shall the department assess a civil monetary penalty authorized pursuant to this section or post the said premises as provided in RCW 18.51.260 or include in the report required pursuant to RCW 18.51.270 during any period in which it has not fully implemented and funded its cost-related reimbursement system for public patients. [1975 1st ex.s. c 99 § 2; 1953 c 160 § 5; 1951 c 117 § 7.]

**18.51.065 Denial, suspension, revocation of license or provisional license—Hearing.** All orders of the department denying, suspending, or revoking the license or provisional license, and/or assessing a monetary penalty shall become final twenty days after the same has been

served upon the applicant or licensee unless a hearing is requested. All hearings hereunder and judicial review of such determinations shall be in accordance with the administrative procedure act, chapter 34.04 RCW. [1975 1st ex.s. c 99 § 16.]

**18.51.070 Rules and regulations.** The board, after consultation with the advisory nursing home council, shall adopt, amend, and promulgate such rules, regulations, and standards with respect to all nursing homes to be licensed hereunder as may be designed to further the accomplishment of the purposes of this chapter in promoting safe and adequate medical and nursing care of individuals in nursing homes and the sanitary, hygienic and safe conditions of the nursing home in the interest of public health, safety, and welfare. [1951 c 117 § 8.]

**18.51.090 Inspection of nursing homes—Approval of new facilities.** The department or approved health department shall make or cause to be made at least a yearly inspection and investigation of all nursing homes. Every inspection may include an inspection of every part of the premises and an examination of all records, methods of administration, the general and special dietary and the stores and methods of supply. Following such inspection or inspections, written notice of any violation of this law or the rules and regulations promulgated hereunder, shall be given the applicant or licensee and the department. The board may prescribe by regulations that any licensee or applicant desiring to make specified types of alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, submit its plans and specifications therefor to the department for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized. [1975 1st ex.s. c 213 § 2; 1953 c 160 § 6; 1951 c 117 § 10.]

**Reviser's note:** The amendment of this section by 1975 1st ex.s. c 213 does not take cognizance of the section's repeal by 1975 1st ex.s. c 99 § 17.

**18.51.090 Inspection of nursing homes—Approval of new facilities.** [1953 c 160 § 6; 1951 c 117 § 10.] Repealed by 1975 1st ex.s. c 99 § 17.

**Reviser's note:** This section was also amended by 1975 1st ex.s. c 213 § 2 without cognizance of the repeal thereof.

**18.51.100 Advisory nursing home council—Members—Terms.** The director shall appoint an advisory nursing home council to consult with the department. The council shall be comprised of the director who shall serve as chairman ex officio, and ten members and shall include one representative of each of the following organizations or groups except, that the Washington association of licensed nursing homes shall have three members: State medical association, state hospital association, state nurses association, department of social and health services, Washington state fire marshal, association of Washington cities, association of counties. *Each member shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term and the terms of office of the members first taking office shall expire, as designated at the time of appointment, two at the end of the first year, three at the end of the second year, three at the end of the third year, and two at the end of the fourth year*

after the date of appointment. Thereafter all appointments shall be for four years. The council shall meet as frequently as the chairman deems necessary, but not less than once each year. Upon request by four or more members, it shall be the duty of the chairman to call a meeting of the council. [1971 ex.s. c 85 § 1; 1951 c 117 § 11.]

**18.51.110 Advisory nursing home council—Duties.** The advisory nursing home council shall:

(1) Consult with the department in matters of policy affecting administration of this chapter, and in the development of rules, regulations, provided for hereunder; and

(2) Review and make recommendations with respect to rules, regulations, and standards authorized hereunder prior to their adoption and promulgation by the board as specified herein. [1951 c 117 § 12.]

**18.51.140 Fire protection—Duties of state fire marshal.** Standards for fire protection and the enforcement thereof, with respect to all nursing homes to be licensed hereunder, shall be the responsibility of the state fire marshal, who shall adopt such recognized standards as may be applicable to nursing homes for the protection of life against the cause and spread of fire and fire hazards. The department upon receipt of an application for a license, shall submit to the state fire marshal in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the state fire marshal or his deputy, shall make an inspection of the nursing home to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as promulgated by the state fire marshal, he shall promptly make a written report to the nursing home and the department as to the manner and time allowed in which the premises must qualify for a license and set forth the conditions to be remedied with respect to fire regulations. The department, applicant or licensee shall notify the state fire marshal upon completion of any requirements made by him, and the state fire marshal, or his deputy, shall make a reinspection of such premises. Whenever the nursing home to be licensed meets with the approval of the state fire marshal, he shall submit to the department, a written report approving same with respect to fire protection before a full license can be issued. The state fire marshal shall make or cause to be made inspections of such nursing homes at least annually.

In cities which have in force a comprehensive building code, the provisions of which are determined by the state fire marshal to be equal to the minimum standards of the state fire marshal's code for nursing homes, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the state fire marshal or his deputy and they shall jointly approve the premises before a full license can be issued. [1953 c 160 § 9; 1951 c 117 § 15.]

*State fire marshal: Chapter 48.48 RCW.*

**18.51.150 Operating without license—Penalty.** Any person operating or maintaining any nursing home without a license under this chapter shall be guilty of a misdemeanor and each day of a continuing violation after conviction shall be considered a separate offense. [1951 c 117 § 16.]

**18.51.160 Operating without license—Injunction.** Notwithstanding the existence or use of any other remedy, the department, may, in the manner provided by law, upon the advice of the attorney general who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the operation or maintenance of a nursing home without a license under this chapter. [1951 c 117 § 17.]

*Injunctions: Chapter 7.40 RCW.*

**18.51.170 Application of chapter to homes operated by certain religious organizations.** Nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any nursing home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination. [1951 c 117 § 21.]

**18.51.180 Out-patient services—Authorized—Defined.** A nursing home may, pursuant to rules and regulations adopted by the department of social and health services, offer out-patient services to persons who are not otherwise patients at such nursing home. Any certified nursing home offering out-patient services may receive payments from the federal medicare program for such services as are permissible under that program.

Out-patient services may include any health or social care needs, except surgery, that could feasibly be offered on an out-patient basis. [1973 1st ex.s. c 71 § 1.]

**18.51.185 Out-patient services—Cost studies—Vendor rates.** The department of social and health services shall assist the nursing home industry in researching the costs of out-patient services allowed under RCW 18.51.180. Such cost studies shall be utilized by the department in the determination of reasonable vendor rates for nursing homes offering such services to insure an adequate return to the nursing homes and a cost savings to the state as compared to the cost of institutionalization. [1973 1st ex.s. c 71 § 2.]

**18.51.190 Complaint of violation—Request for inspection—Notice—Confidentiality.** Any person may request an inspection of any nursing home subject to licensing under this chapter in accordance with the provisions of this chapter by giving notice to the department of an alleged violation of applicable requirements of state law. Any such notice shall be in writing signed by the complainant and shall set forth with reasonable particularity the matters complained of. The substance of the complaint shall be provided to the licensee no

earlier than at the commencement of the inspection. Neither the substance of the complaint provided the licensee nor any copy of the complaint or record published, released, or otherwise made available to the licensee shall disclose the name of any individual complainant or other person mentioned in the complaint, except the name or names of any duly authorized officer, employee, or agent of the department conducting the investigation or inspection pursuant to this chapter, unless such complainant specifically requests the release of such name or names. [1975 1st ex.s. c 99 § 4.]

**18.51.200 Preliminary review of complaint—On-site inspection.** Upon receipt of a complaint, the department shall assign an inspector to make a preliminary review of the complaint and shall notify the complainant of the name of such inspector. Unless the department determines that the complaint is wilfully intended to harass a licensee or is without any reasonable basis, it shall make an on-site inspection within a reasonable time after the receipt of the complaint. In either event, the complainant shall be promptly informed of the department's proposed course of action. If the complainant requests the opportunity to do so, the complainant or his representative, or both, may be allowed to accompany the inspector to the site of the alleged violations during his tour of the facility, unless the inspector determines that the privacy of any patient would be violated thereby. [1975 1st ex.s. c 99 § 5.]

**18.51.210 Authority to enter and inspect nursing home—Advance notice—Defense.** (1) Any duly authorized officer, employee, or agent of the department may enter and inspect any nursing home, including, but not limited to, interviewing residents and reviewing records, at any time to enforce any provision of this chapter. Inspections conducted pursuant to complaints filed with the department shall be conducted in such a manner as to ensure maximum effectiveness. No advance notice shall be given of any inspection conducted pursuant to this chapter unless previously and specifically authorized by the secretary or required by federal law.

(2) Any public employee giving such advance notice in violation of this section shall be suspended from all duties without pay for a period of not less than five nor more than fifteen days.

(3) In any hearing held pursuant to this chapter it shall be a defense to a violation relating to the standard of care to be afforded public patients to show that the department does not provide sufficient funds to meet the cost of reimbursement standard allegedly violated. [1975 1st ex.s. c 99 § 6.]

**18.51.220 Retaliation or discrimination against complainant prohibited, penalty—Presumption.** (1) No licensee shall discriminate or retaliate in any manner against a patient or employee in its nursing home on the basis or for the reason that such patient or employee or any other person has initiated or participated in any proceeding specified in this chapter. A licensee who violates this section is subject to a civil penalty of not more than five hundred dollars.

(2) Any attempt to expel a patient from a nursing home, or any type of discriminatory treatment of a patient by whom, or upon whose behalf, a complaint has been submitted to the department or any proceeding instituted under or related to this chapter within one year of the filing of the complaint or the institution of such action, shall raise a rebuttable presumption that such action was taken by the licensee in retaliation for the filing of the complaint. [1975 1st ex.s. c 99 § 7.]

**18.51.230 Annual general inspection—Required—Advance notice prohibited.** The department shall, in addition to any inspections conducted pursuant to complaints filed pursuant to RCW 18.51.190, conduct at least one general inspection each year of all nursing homes in the state without providing advance notice of such inspection. At least one such inspection in any three year period shall take place between the hours of 7 p.m. and 5 a.m. or on weekends. [1975 1st ex.s. c 99 § 10.]

**18.51.240 Alterations or additions—Preliminary inspection and approval.** The board may prescribe by regulations that any licensee or applicant desiring to make specific types of alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, submit its plans and specifications therefor to the department for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized. [1975 1st ex.s. c 99 § 11.]

**18.51.250 Nursing homes without violations—Public agencies referring patients to be notified—Priority.** On or before February 1st of each year, the department shall notify all public agencies which refer patients to nursing homes of all of the nursing homes in the area found upon inspection within the previous twelve-month period to be without violations. Public agencies shall give priority to such nursing homes in referring publicly assisted patients. [1975 1st ex.s. c 99 § 12.]

**18.51.260 Citations for violation of RCW 18.51.060 to be posted.** Each citation for a violation specified in subsections (1) through (7) of RCW 18.51.060 which is issued pursuant to this section and which has become final, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the director, until the violation is corrected to the satisfaction of the department up to a maximum of one hundred twenty days. The citation or copy shall be posted in a place or places in plain view of the patients in the nursing home, persons visiting those patients, and persons who inquire about placement in the facility. [1975 1st ex.s. c 99 § 13.]

**18.51.270 Annual report of citations for violations—Publication—Contents.** The department shall annually publish a report listing all licensees by name and address, indicating (1) the number of citations and the nature of each citation issued to each licensee

during the previous twelve-month period and the status of any action taken pursuant to each citation, including penalties assessed, and (2) the nature and status of action taken with respect to each uncorrected violation for which a citation is outstanding.

The report shall be available to the public, at cost, at all offices of the department. [1975 1st ex.s. c 99 § 14.]

**18.51.280 Chapter cumulative.** The remedies provided by this chapter are cumulative, and shall not be construed as restricting any remedy, provisional or otherwise, provided by law for the benefit of any party, and no judgment under this chapter shall preclude any party from obtaining additional relief based upon the same facts. [1975 1st ex.s. c 99 § 8.]

**18.51.290 Writings deemed public record—Open to public inspection—Exception.** Any writing received, owned, used, or retained by the department in connection with the provisions of this chapter is a public record and, as such, is open to public inspection. However, the names of any persons contained in such records, except the names of duly authorized officers, employees, or agents of the department conducting an investigation or inspection in response to a complaint filed pursuant to this chapter, shall not be open to public inspection and copies of such records provided for public inspection shall have such names deleted. [1975 1st ex.s. c 99 § 9.]

**18.51.300 Retention and preservation of records of patients.** Unless specified otherwise by the board, a nursing home shall retain and preserve all records which relate directly to the care and treatment of a patient for a period of no less than ten years following the most recent discharge of the patient; except the records of minors, which shall be retained and preserved for a period of no less than three years following attainment of the age of eighteen years, or ten years following such discharge, whichever is longer.

If a nursing home ceases operations, it shall make immediate arrangements, as approved by the department, for preservation of its records.

The board shall by regulation define the type of records and the information required to be included in the records to be retained and preserved under this section; which records may be retained in photographic form pursuant to chapter 5.46 RCW. [1975 1st ex.s. c 175 § 2.]

**18.51.900 Severability—1951 c 117.** If any provision of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of this act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable. [1951 c 117 § 22.]

## Chapter 18.52

### NURSING HOME ADMINISTRATORS

#### Sections

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*Labor regulations, collective bargaining—Health care activities: Chapter 49.66 RCW.*

**18.52.010 Short title—Intent.** This chapter shall be known as the "Nursing Home Administrator Licensing Act" and is intended to establish and provide for the enforcement of standards for the licensing of nursing home administrators. [1970 ex.s. c 57 § 1.]

**18.52.020 Definitions.** When used in this chapter, unless the context otherwise clearly requires:

(1) "Board" means the state board of examiners for the licensing of nursing home administrators representative of the professions and institutions concerned with the care of the chronically ill and infirm aged patients.

(2) "Director" means the director of the department of motor vehicles.

(3) "Nursing home" means any facility or portion thereof licensed under state law as a nursing home.

(4) "Nursing home administrator" means an individual in active administrative charge of nursing homes as defined herein, whether or not having an ownership interest in such homes, and although functions and duties may be shared with or delegated to other persons: *Provided however,* That nothing in this definition or this chapter shall be construed to prevent any person, so long as he is otherwise qualified, from obtaining and maintaining a license even though he has not administered or does not continue to administer a nursing home. [1970 ex.s. c 57 § 2.]

**18.52.030 Management and supervision of nursing homes by licensed administrators required.** On or after July 1, 1970 nursing homes operating within this state must be under the active, overall administrative charge and supervision of an administrator licensed as provided in this chapter. An administrator may delegate functions and duties to other persons. No person acting in any capacity, unless he is the holder of a nursing home administrator's license issued under this chapter, shall be charged with the overall responsibility to make decisions or direct actions involved in managing the internal operation of a nursing home. [1970 ex.s. c 57 § 3.]



**18.52.040 Board of examiners for nursing home administrators—Created—Membership.** There is hereby created a state board of examiners for nursing home administrators which shall consist of nine members appointed by the governor. All members shall be representative of the professions and institutions concerned with the care and treatment of chronically ill or infirm elderly patients. However, at no time shall representatives of a single profession or a single institutional category compose a majority of the board membership. In addition, no member who is a noninstitutional representative shall have any direct financial interest in nursing homes while serving as a member of the board. For purposes of this section, nursing home administrators are considered representatives of institutions. Eight of the board's members shall be privately or self-employed persons who the governor finds have had at least four years of actual experience in the administration or overall management of licensed nursing homes in this state immediately prior to the governor's appointment of them to the board; or shall be representatives from the medical professions, or health care administration education, or persons with four years actual experience in the administration of the nursing home unit of a licensed hospital immediately preceding the governor's appointment of them to the board; and shall be privately or self-employed persons, or persons employed by educational institutions, whom the governor appoints because of their special knowledge or expertise in the field of long term care or the care of the aged and chronically ill: *Provided*, That one member shall be a citizen eligible for medicare who shall have no financial interest in or family ownership connection with nursing homes. Board members selected who meet any of the preceding qualifications may in addition be nurses, physicians or other persons with special health care training. The governor shall consult with and seek the recommendations of the appropriate state-wide business and professional organizations and societies primarily concerned with long term health care facilities in the course of considering his appointments to the board. [1975 1st ex.s. c 97 § 1; 1970 ex.s. c 57 § 4.]

**18.52.050 Board of examiners for nursing home administrators—Qualifications—Terms—Removal.** Members of the board shall be citizens of the United States and residents of this state. Except for the initial appointments to the first board, all administrator members of the board shall be holders of licenses under this chapter. Three members of the board shall be appointed initially for terms of three years, three members shall be appointed for terms of two years, and three members shall be appointed for terms of one year. Thereafter the terms of all members shall be three years. Members of the board may be removed by the governor for cause after appropriate notice and hearing. [1970 ex.s. c 57 § 5.]

**18.52.060 Board of examiners for nursing home administrators—Officers—Meetings—Expenses—Personnel.** The board shall elect from its membership a chairman, vice chairman, and secretary-

treasurer, and shall adopt rules and regulations to govern its proceedings. The chairman or four board members by signed written request may call board meetings upon reasonable written notice to each member. Each member shall receive twenty-five dollars for each day or major portion thereof actually spent on official business, plus travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. A full time or part time executive secretary for the board may be employed by the director through the department of motor vehicles, and the director through the department of motor vehicles shall provide the executive secretary and the board with such secretarial, administrative, and other assistance as may be required to carry out the purposes of this chapter. Employment of an executive secretary shall be subject to confirmation by the board. The position of executive secretary shall be exempt from the requirements of chapter 41.06 RCW. [1975-'76 2nd ex.s. c 34 § 38; 1970 ex.s. c 57 § 6.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.52.070 Qualifications of licensees—Examinations.** Upon the director's receipt of an application and examination fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, and completed application forms provided by the director, a nursing home administrator's license shall be issued to any person who:

(1) Is at least twenty-one years of age and of good moral character.

(2) Has satisfactorily completed a course of instruction and training concerning nursing home or health facility administration approved by the board, or has presented upon his affidavit evidence satisfactory to the board of at least two years of practical experience in the field of institutional administration which, regardless of formal training or instruction, is in the opinion of the board equivalent to two years of experience in the operation of a nursing home.

(3) Has passed an examination administered by the board which shall be designed to test the candidate's competence to administer a nursing home on the basis of the candidate's formal instruction and training or actual experience: *Provided however*, That nothing in this chapter or the rules and regulations thereunder shall be construed to require an applicant for a license or provisional license as a nursing home administrator who is certified by any well established and generally recognized church or religious denomination which teaches reliance on spiritual means alone for healing as having been approved to administer institutions certified by such church or denomination for the care and treatment of the sick in accordance with its teachings, to demonstrate proficiency in any medical techniques or to meet any medical educational qualifications or medical standards not in accord with the remedial care and treatment provided in such institutions: *Provided further*, That any such individual shall demonstrate in the process of application for the examination his membership in such church or religious denomination and his license shall



indicate the limited extent of his authority to act as an administrator.

(4) The initial administrator members of the board shall be selected and appointed by the governor to meet the requirements of subsection (1) of this section and of RCW 18.52.040 and 18.52.050. The three nonadministrator members of the first board shall administer to the initial administrator members an appropriate examination, and the initial administrator members shall thereafter be issued their licenses under this chapter as nursing home administrators. The three nonadministrator members of the first board may exercise the powers of the board to carry out licensing of the initial administrator members, regardless of the normal quorum or procedural requirements for board action. The licensing of the initial administrator members of the first board shall be carried out within thirty days after appointment of the board, and in all events prior to April 1, 1970. [1975 1st ex.s. c 30 § 52; 1970 ex.s. c 57 § 7.]

**18.52.080 Provisional licenses.** (1) Upon the director's receipt of an annual fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, a provisional license may be issued to any individual applying therefor who has served, as shown by such individual's affidavit, as a nursing home administrator during all of the calendar year immediately preceding July 1, 1970, and meets the standards of RCW 18.52.070(1). Any such provisional license shall terminate after two years or at midnight, June 30, 1972, whichever is earlier. If prior to the expiration of such provisional license, the provisional licensee has qualified to take and has passed the examination required by the board, a nursing home administrator's license shall be issued to him.

(2) If a provisional license is issued to any individual, there shall be provided in this state during all of the period for which such provisional license remains in effect a program of training and instruction designed to enable all provisional licensed nursing home administrators to attain the qualifications necessary to be fully licensed as a nursing home administrator as provided under this chapter. The single state agency administering the program of this state under Title XIX of the Federal Social Security Act shall apply for, receive, and administer such federal funds as are made available to carry out the educational programs contemplated by this section. [1975 1st ex.s. c 30 § 53; 1970 ex.s. c 57 § 8.]

**18.52.090 Licensing duties and responsibilities of director.** The director shall have the administrative duty and responsibility to:

(1) Issue nursing home administrator's licenses to individuals who meet the licensing requirements of RCW 18.52.070 and 18.52.080;

(2) Advise and assist the executive secretary or board as may be required in the investigation of complaints against nursing home administrators, and upon order of the board and after notice and hearing before the board, revoke, suspend for not more than thirty days, or refuse to reregister the license of any holder or applicant who

fails to meet the licensing requirements of this chapter. [1970 ex.s. c 57 § 9.]

**18.52.100 Duties and responsibilities of board—Standards, licenses, complaints, temporary permits, rules and regulations.** The board with the assistance of the director for administrative matters shall have the duty and responsibility within the limits provided in this chapter:

(1) To develop standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators as provided in this chapter.

(2) To develop appropriate techniques, including examinations and investigations to the extent necessary to determine whether an individual meets such standards for licensing.

(3) To order the director to issue licenses to individuals determined by the board, after the application of such techniques, to meet such standards, and after notice and hearing to order the director to revoke, suspend or refuse to reregister licenses previously issued in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards for licensing.

(4) To investigate, and take appropriate action with respect to, any charge or complaint filed with the board or director to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of the standards for licensing.

(5) To conduct a continuing study and investigation of the licensing of administrators of nursing homes within the state with a view to the improvement of the standards imposed for the licensing of new administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who are to be licensed.

(6) To encourage qualified educational institutions and other qualified organizations to establish, provide, and conduct and continue such training and instruction courses and programs as will enable all otherwise qualified individuals to attain the qualifications necessary to meet the standards for licensing nursing home administrators.

(7) To establish and carry out procedures, if required, designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements and standards for licensing set forth in this chapter.

(8) To establish appropriate procedures for the issuance in unusual circumstances and without examination of temporary license permits as nursing home administrators. Such permits may be issued and renewed by the director pursuant to rules and regulations which shall be established by the board. Such permits and renewals shall be subject to confirmation or rescission by order of the board upon review at the next board meeting. Any such permit or renewal thereof shall in all events expire

six months from the date issued. No more than three consecutive permits shall be issued to any one person. Persons receiving such permits need not have passed the required examination but shall meet the other requirements of this chapter, except RCW 18.52.070(2). After hearing before the board and upon order of the board the director may revoke or suspend any such permit for the reasons provided in this chapter for suspension or revocation of administrator licenses.

(9) To advise the relevant state agencies regarding receipt and administration of such federal funds as are made available to carry out the educational purposes of this chapter.

(10) To advise the director regarding the application forms used by the director under this chapter.

(11) To direct the granting of provisional licenses as provided in this chapter.

(12) To issue rules and regulations which are necessary to carry out the functions of the board specifically assigned to it by this chapter. [1970 ex.s. c 57 § 10.]

**18.52.110 Reregistration of licenses.** (1) Every holder of a nursing home administrator's license shall reregister it annually with the director on dates specified by the director by making application for reregistration on forms provided by the director. Such reregistration shall be granted automatically upon receipt of a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. In the event that any license is not reregistered within thirty days after the date for reregistration specified by the director, the director shall, in accordance with rules prescribed by the board, give notice to the license holder, and may thereafter in accordance with rules prescribed by the board charge up to double the normal reregistration fee. In the event that the license of an individual is not reregistered within three years from the most recent date for reregistration it shall lapse and such individual must again apply for licensing and meet all requirements of this chapter for a new applicant. The board may prescribe rules for maintenance of a license at a reduced fee for temporary or permanent withdrawal or retirement from the active practice of nursing home administration.

(2) A condition of reregistration shall be the presentation of proof by the applicant that he has attended the number of classroom hours of approved educational programs, classes, seminars, or proceedings set by the board. The board shall have the power to approve programs, classes, seminars, or proceedings offered in this state or elsewhere by any accredited institution of higher learning or any national or local group or society if such programs, classes, seminars, or proceedings are reasonably related to the administration of nursing homes. The board shall establish rules and regulations providing that the applicant for reregistration may present such proofs yearly, or may obtain the cumulative number of required hours over a three year period and present such proofs over periods of three years. In no event shall the number of classroom hours required for any time period exceed the number of such board approved classroom hours reasonably available over such time period on an adult

or continuing education basis to nonmatriculating participants in this state.

(3) An individual may obtain and reregister a license under this chapter although he does not actively engage in nursing home administration. [1975 1st ex.s. c 30 § 54; 1971 ex.s. c 266 § 9; 1970 ex.s. c 57 § 11.]

**18.52.120 Suspension, revocation or refusal of reregistration of licenses.** The director, after notice and hearing before the board and upon the order of the board shall refuse to reregister or shall suspend or revoke an administrator's license as provided in this chapter:

(1) In the event the licensee or applicant has committed any fraud or material misrepresentation or concealment in obtaining or applying for the license.

(2) In the event the licensee or applicant has been convicted of a crime involving moral turpitude.

(3) If the license was obtained due to the mistake or inadvertence of the board or director.

(4) In the event the licensee has wilfully or repeatedly violated any of the provisions of this chapter or of the rules promulgated by the board in accordance with this chapter, or of the rules promulgated by the department of social and health services: *Provided*, That the license suspension shall only occur when instituted by board action and shall be subject to court review pursuant to chapter 34.04 RCW.

(5) In the event the licensee has been declared mentally incompetent by a court of competent jurisdiction.

Persons whose licenses have been revoked, or to whom reregistration has been refused, may, on subsequent application be licensed, relicensed, or reregistered, according to such rules or regulations as may be prescribed by the board and according to standards prescribed by the board. Suspended licenses are automatically in force at the expiration of thirty days from the date of suspension, but must be reregistered in the normal course if they expire during the period of suspension. [1975 1st ex.s. c 97 § 2; 1970 ex.s. c 57 § 12.]

**18.52.130 Reciprocity.** Upon receipt of an application fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended and an annual license fee, the director may issue a nursing home administrator's license, without examination, to any person who holds a current license as a nursing home administrator from another jurisdiction: *Provided*, That the board finds that the standards for licensing in such other jurisdiction are at least the substantial equivalent of those prevailing in this state, and that the applicant is otherwise qualified. In the event that there is developed a nationally recognized standard for the licensing of nursing home administrators which is in fact utilized in licensing procedures on a reasonably uniform basis the board may by rule or regulation provide for granting reciprocal licensing on a showing of compliance with such standard. [1975 1st ex.s. c 30 § 55; 1970 ex.s. c 57 § 13.]

**18.52.140 License required—Penalty.** It shall be unlawful and constitute a gross misdemeanor for any

person to act or serve in the capacity of a nursing home administrator unless he is the holder of a nursing home administrator's license issued in accordance with the provisions of this chapter: *Provided however*, That persons carrying out functions and duties delegated by a licensed administrator shall not be construed to be committing any unlawful act under this chapter. [1970 ex.s. c 57 § 14.]

**18.52.150 Proceedings—Hearings—Appeals—Investigations.** All proceedings under this chapter of the director and board for rule making, for the hearings required by this chapter, for contested cases and for appeals shall be conducted in conformity with the administrative procedure act. All hearings specified under this chapter are mandatory. Complaints regarding any licensed administrator shall be considered only if submitted to the board in writing and verified under oath and if they indicate a possible violation of the provisions of this chapter. In any such case, the complaint will be fully disclosed to the affected administrator and will be investigated to determine whether any board action should be initiated, and the report of such investigation shall be fully disclosed immediately to the licensed administrator in question. Hearings may be conducted by the board, by a committee of the board the majority of which shall be administrator members, a hearing officer engaged by the board who shall be a licensed administrator, or by a hearing examiner of the state. [1970 ex.s. c 57 § 15.]

**18.52.160 Examinations—Times and places—Meetings of board.** On or before March 15, 1970 the governor shall establish the first board which shall immediately meet for organizational purposes and shall thereafter meet as often as may be necessary to carry out the duties of the board under this chapter. The first examinations shall be administered and regular and provisional licenses shall be issued under this chapter prior to July 1, 1970. Thereafter examinations shall be administered at intervals not less than semiannually and at such times and places as may be determined by the board. There shall not be a limit upon the number of times a candidate may take the required examination. [1970 ex.s. c 57 § 17.]

**18.52.170 Fees and revenues—Disposition.** All fees or revenue collected in accordance with the provisions of this chapter shall be deposited in the state general fund. [1970 ex.s. c 57 § 19.]

**18.52.900 Severability—1970 ex.s. c 57.** If any provision of this 1970 act, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1970 ex.s. c 57 § 20.]

## Chapter 18.53 OPTOMETRY

Sections	
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18.53.901	Severability—1973 c 48.
18.53.910	Severability—1919 c 144.
18.53.911	Severability—1975 1st ex.s. c 69.
18.53.920	Repeal.

**Reviser's note:** "Director" and "director of licenses" have been substituted for "board", "optometry board" and "board of examiners" and pronouns have been changed accordingly throughout this chapter since the state board of medical examiners and the state optometry board were abolished by 1921 c 7 § 135 and their powers and duties were transferred to the director of licenses by 1921 c 7 § 96 (RCW 43.24-.020), which powers and duties subsequently devolved to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest.

**Reviser's note:** The optometry board was reestablished and reconstituted by chapter 25, Laws of 1963 (chapter 18.54 RCW).

**Rebating by practitioners of healing professions prohibited: Chapter 19.68 RCW.**

**18.53.005 Legislative finding and declaration.** The legislature finds and declares that the practice of optometry is a learned profession and affects the health, welfare and safety of the people of this state, and should be regulated in the public interest and limited to qualified persons licensed under the provisions of \*this 1975 amendatory act. [1975 1st ex.s. c 69 § 1.]

**\*Reviser's note:** "this 1975 amendatory act" [1975 1st ex.s. c 69] consists of RCW 18.53.005, 18.53.155, 18.53.200, 18.53.911, amendments to RCW 18.53.010, 18.53.020, 18.53.040, 18.53.060, 18.53.070, 18.53.100, 18.53.140, 18.53.190, 18.54.050, 18.54.070, 18.54.080, 18.54.140 and the repeal of RCW 18.53.090.

**18.53.010 Definition.** The practice of optometry is defined as the examination of the human eye, the examination and ascertaining any defects of the human vision system and the analysis of the process of vision. The

practice of optometry may include, but not necessarily be limited to, the following:

(1) The employment of any objective or subjective means or method and the use of any diagnostic instruments or devices for the examination or analysis of the human vision system, the measurement of the powers or range of human vision, or the determination of the refractive powers of the human eye or its functions in general; and

(2) The prescription and fitting of lenses, prisms, therapeutic or refractive contact lenses and the adaption or adjustment of frames and lenses used in connection therewith; and

(3) The prescription and provision of visual therapy, therapeutic aids and other optical devices; and

(4) The ascertainment of the perceptive, neural, muscular or pathological condition of the visual system; and

(5) The adaptation of prosthetic eyes. [1975 1st ex.s. c 69 § 2; 1919 c 144 § 1; RRS § 10147. Prior: 1909 c 235 § 1.]

**18.53.020 Licensing required.** It shall be unlawful for any person to practice optometry as above defined in the state of Washington without first obtaining a license from the director of motor vehicles. [1975 1st ex.s. c 69 § 3; 1919 c 144 § 2; RRS § 10148. Prior: 1909 c 235 § 5.]

**18.53.030 Temporary permit—When issued.** The director may at his discretion, issue a permit to practice optometry during the interim between examinations, to any person who has filed an application for examination which has been accepted by said director as admitting the applicant to the next examination. Such permit shall be valid only until the date of the next examination and shall not be issued sooner than thirty days following any regular examination, and no permit shall be issued to any person who has failed before the director, nor where a certificate has been revoked. [1919 c 144 § 8; RRS § 10153.]

**18.53.040 Exemptions—Exceptions—Limitation.** Nothing in this chapter shall be construed to pertain in any manner to the practice of any regularly qualified oculist or physician, who is regularly licensed to practice medicine in the state of Washington, or to any person who is regularly licensed to practice as a dispensing optician in the state of Washington, nor to any person who in the regular course of trade, sells or offers for sale, spectacles or eyeglasses as regular merchandise without pretense of adapting them to the eyes of the purchaser, and not in evasion of this chapter: *Provided*, That any such regularly qualified oculist or physician or other person shall be subject to the provisions of subdivisions (10) through (15) of RCW 18.53.140, in connection with the performance of any function coming within the definition of the practice of optometry as defined in this chapter: *Provided further, however*, That in no way shall this section be construed to permit a dispensing optician to practice optometry as defined in \*this 1975 amendatory act. [1975 1st ex.s. c 69 § 15; 1937 c 155 §

3; 1919 c 144 § 15; Rem. Supp. 1937 § 10159. Prior: 1909 c 235 § 13.]

\*Reviser's note: "this 1975 amendatory act", see note following RCW 18.53.005.

**18.53.050 Certificate renewal—Suspension, revocation for failure to pay—Optometry account.** During the month of January of each year, every registered optometrist shall pay to the state treasurer a renewal fee, to be determined by the director as provided in RCW 43.24.085 as now or hereafter amended, and failure to pay such fee within the prescribed time shall cause the suspension of his certificate. The state treasurer shall place two dollars and forty cents from each renewal fee into the general fund and shall place the balance into an optometry account which is hereby created for the enforcement of this chapter. Any residue in such account shall be accumulated and shall not revert to the general fund at the end of any biennium.

In the event of failure to pay the renewal fee, the director shall mail a notice of such suspension to the last known post office address of the holder between the first and fifth days of February, March, and April next following and if the fee is not paid by May 1st the director may declare the certificate revoked and immediately notify the county clerk of the county in which the certificate is recorded, and the clerk shall mark his records accordingly. [1975 1st ex.s. c 30 § 56; 1971 ex.s. c 266 § 10; 1955 c 275 § 1; 1919 c 144 § 13; RRS § 10158.]

**18.53.055 License renewal—Reinstatement after revocation, suspension.** In the event of revocation of license for nonpayment of required renewal fees, reinstatement may be effected by payment of accumulated unpaid renewal fees accruing from the date of suspension of license to the date of reinstatement. Funds realized from such reinstatements shall be distributed as provided in RCW 18.53.050. [1955 c 275 § 2.]

**18.53.060 License applicants—Eligibility—Qualifications—Examinations—Exception.** From and after January 1, 1940, in order to be eligible for examination for registration, a person shall be a citizen of the United States of America, who shall have a preliminary education of or equal to four years in a state accredited high school and has completed a full attendance course in a regularly chartered school of optometry maintaining a standard which is deemed sufficient and satisfactory by the optometry board, who is a person of good moral character, who is not afflicted with any contagious or infectious disease, who has a visual acuity in at least one eye, of a standard known as 20/40 under correction: *Provided*, That from and after January 1, 1975, in order to be eligible for examination for a license, a person shall have the following qualifications:

(1) Be a graduate of a state accredited high school or its equivalent;

(2) Have a diploma or other certificate of completion from an accredited college of optometry or school of optometry, maintaining a standard which is deemed sufficient and satisfactory by the optometry board, conferring its degree of doctor of optometry or its equivalent,

maintaining a course of four scholastic years in addition to preprofessional college level studies, and teaching substantially all of the following subjects: General anatomy, anatomy of the eyes, physiology, physics, chemistry, pharmacology, biology, bacteriology, general pathology, ocular pathology, ocular neurology, ocular myology, psychology, physiological optics, optometrical mechanics, clinical optometry, visual field charting and orthoptics, general laws of optics and refraction and use of the ophthalmoscope, retinoscope and other clinical instruments necessary in the practice of optometry;

(3) Be of good moral character; and

(4) Have no contagious or infectious disease.

Such person shall file an application for an examination and license with said board at any time thirty days prior to the time fixed for such examination, or at a later date if approved by the board, and such application must be on forms approved by the board, and properly attested, and if found to be in accordance with the provisions of this chapter shall entitle the applicant upon payment of the proper fee, to take the examination prescribed by the board. Such examination shall not be out of keeping with the established teachings and adopted textbooks of the recognized schools of optometry, and shall be confined to such subjects and practices as are recognized as essential to the practice of optometry. All candidates without discrimination, who shall successfully pass the prescribed examination, shall be registered by the board and shall, upon payment of the proper fee, be issued a license. The optometry board, at its discretion, may waive all or a portion of the written examination for any applicant who has satisfactorily passed the examination given by the National Board of Examiners in Optometry. Any license to practice optometry in this state issued by the director, and which shall be in full force and effect at the time of passage of \*this 1975 amendatory act, shall be continued. [1975 1st ex.s. c 69 § 4; 1937 c 155 § 1; 1919 c 144 § 5; Rem. Supp. 1937 § 10150. Prior: 1909 c 235 § 7. Formerly RCW 18.53.060 and 18.53.080.]

\*Reviser's note: "this 1975 amendatory act", see following RCW 18.53.005.

**18.53.070 Application fees (as amended by 1975 1st ex.s. c 30).** The fees for application for examination and for issuing a certificate of registration shall be determined by the director as provided in RCW 43.24.085 as now or hereafter amended, which shall be paid to the director as he shall prescribe. [1975 1st ex.s. c 30 § 57; 1919 c 144 § 9; RRS § 10151. Prior: 1909 c 235 § 7.]

**18.53.070 Application and license fees (as amended by 1975 1st ex.s. c 69).** The fee for application for examination shall be fifteen dollars and the fee for issuing a license shall be the same as the annual renewal fee set forth in RCW 18.53.050 as the same now exists or is hereafter amended, which shall be paid to the director as he shall prescribe. [1975 1st ex.s. c 69 § 5; 1919 c 144 § 9; RRS § 10151. Prior: 1909 c 235 § 7.]

Reviser's note: RCW 18.53.070 was amended twice during the 1975 first extraordinary session of the legislature, each without reference to the other.

For rule of construction concerning sections amended more than once at the same session, see RCW 1.12.025.

**18.53.100 Revocation of license—Grounds.** The optometry board may under the provisions of the

administrative procedure act, chapter 34.04 RCW, upon presentation of evidence and information by the director, revoke the license of any optometrist for any of the following causes:

(1) Conviction of any crime involving moral turpitude; or

(2) Any form of fraud or deceit used in securing a license; or

(3) Any unprofessional conduct, of a nature likely to deceive or defraud the public; or

(4) The obtaining of any fee by fraud or misrepresentation; or

(5) The employing either directly or indirectly of any person or persons commonly known as "cappers" or "steerers" to obtain business; or

(6) To employ any person to solicit from house to house, or to personally solicit from house to house; or

(7) The employment of any unlicensed person to perform the work covered by this chapter; or

(8) Advertisement in any way in which untruthful, improbable or impossible statements are made regarding treatments, cures or values; or

(9) The use of the term "eye specialist" in connection with the name of such optometrist; or

(10) For habits of intemperance or habitual drunkenness, addiction to the drug habit, in a manner likely to destroy the accuracy of the work of an optometrist; or

(11) Affliction with a contagious or infectious disease, or one which is likely to destroy the accuracy of the work of the afflicted; or

(12) For any cause for which the director or board of optometry might refuse to admit a candidate to his examination; or

(13) Inability to demonstrate, in a manner satisfactory to the director or the board of optometry, their practical ability to perform any function set forth in RCW 18.53-.010 which they utilize in their practice; or

(14) For the violation of any provision of this chapter or any rules and regulations of the director or the optometry board. [1975 1st ex.s. c 69 § 6; 1919 c 144 § 11; RRS § 10156. Prior: 1909 c 235 §§ 11, 12.]

*False advertising: Chapter 9.04 RCW.*

*Narcotics: Chapter 69.32 RCW.*

*Powers previously vested in director of licenses under RCW 18.53.100 now vested in optometry board: RCW 18.54.150.*

*Uniform alcoholism and intoxication treatment act: Chapter 70.96A RCW.*

**18.53.140 Unlawful acts—Penalty.** It shall be unlawful for any person:

(1) To sell or barter, or offer to sell or barter any license issued by the director; or

(2) To purchase or procure by barter any license with the intent to use the same as evidence of the holder's qualification to practice optometry; or

(3) To alter with fraudulent intent in any material regard such license; or

(4) To use or attempt to use any such license which has been purchased, fraudulently issued, counterfeited or materially altered as a valid license; or

(5) To practice optometry under a false or assumed name, or as a representative or agent of any person, firm

or corporation with which the licensee has no connection: *Provided*, Nothing in this chapter nor in the optometry law shall make it unlawful for any lawfully licensed optometrist or association of lawfully licensed optometrists to practice optometry under the name of any lawfully licensed optometrist who may transfer by inheritance or otherwise the right to use such name; or

(6) To wilfully make any false statements in material regard in an application for an examination before the director, or for a license; or

(7) To practice optometry in this state either for himself or any other individual, corporation, partnership, group, public or private entity, or any member of the licensed healing arts without having at the time of so doing a valid license issued by the director of motor vehicles; or

(8) To in any manner barter or give away as premiums either on his own account or as agent or representative for any other purpose, firm or corporation, any eyeglasses, spectacles, lenses or frames; or

(9) To use drugs in the examination of eyes; or

(10) To use advertising whether printed, radio, display, or of any other nature, which is misleading or inaccurate in any material particular, nor shall any such person in any way misrepresent any goods or services (including but without limitation, its use, trademark, grade, quality, size, origin, substance, character, nature, finish, material, content, or preparation) or credit terms, values, policies, services, or the nature or form of the business conducted; or

(11) To advertise the "free examination of eyes," "free consultation," "consultation without obligation," "free advice," or any words or phrases of similar import which convey the impression to the public that eyes are examined free or of a character tending to deceive or mislead the public, or in the nature of "bait advertising;" or

(12) To use an advertisement of a frame or mounting which is not truthful in describing the frame or mounting and all its component parts. Or advertise a frame or mounting at a price, unless it shall be depicted in the advertisement without lenses inserted, and in addition the advertisement must contain a statement immediately following, or adjacent to the advertised price, that the price is for frame or mounting only, and does not include lenses, eye examination and professional services, which statement shall appear in type as large as that used for the price, or advertise lenses or complete glasses, viz.: frame or mounting with lenses included, at a price either alone or in conjunction with professional services; or

(13) To use advertising, whether printed, radio, display, or of any other nature, which inaccurately lays claim to a policy or continuing practice of generally underselling competitors; or

(14) To use advertising, whether printed, radio, display or of any other nature which refers inaccurately in any material particular to any competitors or their goods, prices, values, credit terms, policies or services; or

(15) To use advertising whether printed, radio, display, or of any other nature, which states any definite amount of money as "down payment" and any definite

amount of money as a subsequent payment, be it daily, weekly, monthly, or at the end of any period of time; or

(16) To violate any provision of this chapter or any rules and regulations promulgated thereunder. [1975 1st ex.s. c 69 § 7; 1945 c 78 § 1; 1935 c 134 § 1; 1919 c 144 § 7; Rem. Supp. 1945 § 10152. Cf. 1909 c 235 § 5.]

*False advertising: Chapter 9.04 RCW.*

**18.53.145 Unlawful to advertise indemnity benefits to health care service contract subscribers when not a participant or contractor.** It shall be unlawful for any licensee subject to the provisions of chapter 18.53 RCW to advertise to the effect that benefits in the form of indemnity will accrue to subscribers of health care service contracts for services performed by the licensee for a subscriber when the licensee is neither a health care service contractor nor a participant. A violation of this section shall be punishable as provided in RCW 18.53.140(10). [1969 c 143 § 2.]

**18.53.150 Violations generally—Penalty.** Any person violating any provision of RCW 18.53.010 through 18.53.150 shall, upon conviction thereof, be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned not less than thirty days nor more than six months, or both. [1919 c 144 § 22; RRS § 10163. Prior: 1909 c 235 § 12.]

**18.53.155 Injunction to restrain violations.** If any person engages in the practice of optometry without possessing a valid license to do so, or if he violates the provisions of RCW 18.53.100 or 18.53.140, the attorney general, any prosecuting attorney, the director, or any citizen of the same county, may maintain an action in the name of the state of Washington to enjoin such person from engaging in practice as an optometrist. The injunction shall not relieve from criminal prosecution, but the remedy by injunction shall be in addition to the liability of such offender to criminal prosecution and to suspension or revocation of his license. [1975 1st ex.s. c 69 § 13.]

**18.53.160 Public aid ocular services—Discrimination prohibited.** All agencies of the state and its subdivisions, and all commissions, clinics and boards administering relief, public assistance, public welfare assistance, social security, health insurance, or health service under the laws of this state, shall accept the services of licensed optometrists for any service covered by their licenses relating to any person receiving benefits from said agencies or subdivisions and shall pay for such services in the same way as practitioners of other professions may be paid for similar services. None of the said governmental agencies, or agents, officials or employees thereof, including the public schools, in the performance of their duties shall in any way show discrimination among licensed ocular practitioners. [1949 c 149 § 1; Rem. Supp. 1949 § 9991a.]

**18.53.165 Discrimination prohibited—Legislative finding and declaration.** The legislature finds and declares that the costs of health care to the people are



rising disproportionately to other costs and that there is a paramount concern that the right of the people to obtain access to health care in all its facets is being impaired thereby. For this reason, the reliance on the mechanism of insurance, whether profit or nonprofit, is the only effective manner in which the large majority of the people can attain access to quality health care, and it is therefore declared to be in the public interest that health care insurance be regulated to assure that all the people have access to health care rendered by whatever means, and to the greatest extent possible. RCW 18.53.165 through 18.53.190 and 18.53.901, prohibiting discrimination against the legally recognized and licensed profession of optometrists, is necessary in the interest of the public health, welfare and safety. [1973 c 48 § 1.]

**18.53.170 Discrimination prohibited—Acceptance of services by state agencies and subdivisions.** Notwithstanding any other provision of law, the state and its political subdivisions shall accept the services of licensed optometrists for any service covered by their licenses with relation to any person receiving benefits, salaries, wages, or any other type of compensation from the state, its agencies or subdivisions. [1973 c 48 § 2.]

**18.53.175 Discrimination prohibited—State agencies and subdivisions—Officials and employees.** The state and its political subdivisions, and all officials, agents, employees, or representatives thereof, are prohibited from in any way discriminating against licensed optometrists in performing and receiving compensation for services covered by their licenses. [1973 c 48 § 3.]

**18.53.180 Discrimination prohibited—Agreements or contracts by state and subdivisions.** Notwithstanding any other provision of law, the state and its political subdivisions, and all officials, agents, employees, or representatives thereof, are prohibited from entering into any agreement or contract with any individual, group, association, or corporation which in any way, directly or indirectly, discriminates against licensed optometrists in performing and receiving compensation for services covered by their licenses. [1973 c 48 § 4.]

**18.53.185 Discrimination prohibited—Costs immaterial.** Notwithstanding any other provision of law, for the purpose of RCW 18.53.165 through 18.53.180 and 18.53.190 it is immaterial whether the cost of any policy, plan, agreement, or contract be deemed additional compensation for services, or otherwise. [1973 c 48 § 5.]

**18.53.190 Discrimination prohibited—Application of law.** RCW 18.53.165 through 18.53.185 shall apply to all agreements, renewals, or contracts issued on or after June 7, 1973.

Health care service contracts having a participant agreement with a majority of the licensed optometrists within its service area may provide benefits to persons or groups of persons through contracts which allow a subscriber to utilize on an equal participation basis the services of any participant provided in the contract, and

such contracts shall not be discriminatory. [1975 1st ex.s. c 69 § 8; 1973 c 48 § 6.]

**18.53.200 Privileged communications.** The information and records of a licensed optometrist pertaining to a patient shall be privileged communications, the same as now or hereafter may exist in the relationship of physician and patient and shall not be released or subjected to disclosure without the consent of the patient or as otherwise required by law. [1975 1st ex.s. c 69 § 14.]

*Privileged communications—Physician and patient: RCW 5.60.060.*

**18.53.900 Short title.** This act shall be known, and may be referred to as, "The Optometry Law". [1919 c 144 § 20.]

*Reviser's note:* This applies to RCW 18.53.010 through 18.53.150.

**18.53.901 Severability—1973 c 48.** If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 c 48 § 7.]

*Reviser's note:* This applies to RCW 18.53.165 through 18.53.190.

**18.53.910 Severability—1919 c 144.** Any question of unconstitutionality arising concerning any of the sections or provisions of this act shall in no wise affect any other section or provision of the act. [1919 c 144 § 18.]

*Reviser's note:* This applies to RCW 18.53.010 through 18.53.150.

**18.53.911 Severability—1975 1st ex.s. c 69.** If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 69 § 17.]

*Reviser's note:* This applies to RCW 18.53.005, 18.53.155, 18.53.200, 1975 amendments to RCW 18.53.010, 18.53.020, 18.53.040, 18.53.060, 18.53.070, 18.53.100, 18.53.140, 18.53.190, 18.54.050, 18.54.070, 18.54.080, 18.54.140 and to the repeal of RCW 18.53.090.

**18.53.920 Repeal.** All acts and parts of acts inconsistent with this act are hereby repealed. [1919 c 144 § 19.]

*Reviser's note:* This applies to RCW 18.53.010 through 18.53.150.

## Chapter 18.54 OPTOMETRY BOARD

### Sections

18.54.010	Definitions.
18.54.020	Examining committee reconstituted as optometry board.
18.54.030	Composition—Appointments—Qualifications— Terms—Vacancies.
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**Reviser's note:** The powers and duties of the director of licenses were transferred to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest.

**18.54.010 Definitions.** Unless the context clearly indicates otherwise, the terms used in this chapter take their meanings as follows:

- (1) "Board" means the optometry board;
- (2) "License" means a certificate or permit to practice optometry as provided in RCW 18.53.020 as amended from time to time;
- (3) "Members" means members of the optometry board. [1963 c 25 § 1.]

**18.54.020 Examining committee reconstituted as optometry board.** The examining committee, heretofore created pursuant to RCW 43.24.060, is reorganized and reconstituted as the optometry board. [1963 c 25 § 2.]

*RCW 43.24.060, 43.24.110 and 43.24.120 not applicable to optometry; RCW 18.54.920.*

**18.54.030 Composition—Appointments—Qualifications—Terms—Vacancies.** The initial composition of the optometry board includes the three members of the examining committee for optometry plus two more optometrists to be appointed by the governor.

The governor must make all appointments to the optometry board. Only optometrists who are citizens of the United States, residents of this state, having been licensed to practice and practicing optometry in this state for a period of at least four years immediately preceding the effective date of appointment, and who have no connection with any school or college embracing the teaching of optometry or with any optical supply business may be appointed.

The governor may set the terms of office of the initial board at his discretion, to establish the following perpetual succession: The terms of the initial board include one position for one year, two for two years and two for three years; and upon the expiration of the terms of the initial board, all appointments are for three years.

In the event that a vacancy occurs on the board in the middle of an appointee's term, the governor must appoint a successor for the unexpired portion of the term only. [1963 c 25 § 3.]

**18.54.040 Officers.** The board must elect a chairman and secretary from its members, to serve for a term of one year or until their successors are elected and qualified. [1963 c 25 § 4.]

**18.54.050 Meetings.** The board must meet at least once yearly or more frequently upon call of the chairman or the director of motor vehicles at such times and places as the chairman or the director of motor vehicles may designate by giving three days' notice or as otherwise required by the administrative procedure act, chapter 34.04 RCW as now or hereafter amended. [1975 1st ex.s. c 69 § 9; 1963 c 25 § 5.]

**Severability—1975 1st ex.s. c 69:** See RCW 18.53.911.

**18.54.060 Quorum.** Three members constitute a quorum for the transaction of business of the board. [1963 c 25 § 6.]

**18.54.070 Powers and duties—Examinations—Unprofessional conduct—Employment of personnel.** The board has the following powers and duties:

(1) The board shall prepare the necessary lists of examination questions, conduct examinations, either written or oral or partly written and partly oral, and shall certify to the director of motor vehicles all lists, signed by all members conducting the examination, of all applicants for licenses who have successfully passed the examination and a separate list of all applicants for licenses who have failed to pass the examination, together with a copy of all examination questions used, and the written answers to questions on written examinations submitted by each of the applicants.

(2) The director shall investigate all complaints and charges of unprofessional conduct against any licensed optometrist, and the board shall hold hearings to determine whether or not such charges are founded.

(3) The board shall take disciplinary action against any optometrist whom the board finds guilty of unprofessional conduct; and may, under appropriate circumstances, order the revocation or suspension of a license to practice optometry by filing a copy of its findings and conclusions with the director of motor vehicles.

(4) The board may employ stenographic and clerical help, and such other assistance as may be necessary to enforce the provisions of this chapter.

(5) The board shall adopt rules and regulations to promote safety, protection and the welfare of the public, to carry out the purposes of this chapter, to aid the board in the performance of its powers and duties, and to govern the practice of optometry. [1975 1st ex.s. c 69 § 10; 1963 c 25 § 7.]

**Severability—1975 1st ex.s. c 69:** See RCW 18.53.911.

**18.54.080 "Unprofessional conduct" defined.** The term "unprofessional conduct" as used in this chapter means and includes the following acts and omissions, or any one or any combination thereof, as follows:

(1) Any one or more of the acts enumerated as grounds for revocation of a license, under the provisions of RCW 18.53.100; or

(2) Any one or more of the acts enumerated as unlawful under the provisions of RCW 18.53.140. [1975 1st ex.s. c 69 § 11; 1963 c 25 § 8.]

**Severability—1975 1st ex.s. c 69:** See RCW 18.53.911.

**18.54.090 Administrative procedures—Minimum fees.** The board is an administrative agency of the state of Washington, and the provisions of the administrative procedure act, chapter 34.04 RCW as amended from time to time, govern the conduct and proceedings of the board. Nothing in this chapter shall be construed to give the board the power to set or recommend a minimum schedule of fees to be charged by licensed optometrist. [1963 c 25 § 9.]

**18.54.100 Suspension or revocation of license for unprofessional conduct.** The filing by the board in the office of the director of licenses of a certificate or order of revocation or suspension, after due notice, hearing, and findings and conclusions, in accordance with the procedure set forth in this chapter, certifying that a holder of a license has been found guilty of unprofessional conduct by the board, constitutes revocation or suspension of the license to practice optometry in this state, and it is unlawful for any person to practice optometry contrary to the terms and conditions imposed by the board and embodied in the board's certificate or order of revocation or suspension. [1963 c 25 § 10.]

**18.54.110 Suspension or revocation of license for unprofessional conduct—Judicial review.** Any person whose license has been revoked or suspended may seek judicial review of the board's action or decision under the provisions of chapter 34.04 RCW as amended from time to time. [1963 c 25 § 11.]

**18.54.120 Suspension or revocation of license for unprofessional conduct—Reinstatement.** Any person whose license has been revoked or suspended may apply to the board for reinstatement at any time; and the board may hold hearings on such petition, may impose such terms or conditions as are appropriate under the circumstances, and may order a reinstatement. [1963 c 25 § 12.]

**18.54.130 Members' expenses.** Members of the board are entitled to receive their travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Each member of the board will also be paid twenty-five dollars for each day or portion thereof spent in discharge of his official duties. [1975-'76 2nd ex.s. c 34 § 39; 1967 c 188 § 3; 1963 c 25 § 13.]

**Effective date—Severability—**—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

**18.54.140 Board may draw on optometry account.** Notwithstanding any other provisions of law, rule or regulation, the board may draw from the optometry account created and held pursuant to RCW 18.53.050, on vouchers approved by the director of motor vehicles, so much money as is necessary to carry into effect, to administer, and to enforce the provisions of this chapter. [1975 1st ex.s. c 69 § 12; 1963 c 25 § 14.]

**Severability—**—1975 1st ex.s. c 69: See RCW 18.53.911.

**18.54.150 Devolution of powers relating to revocation of certificates.** All powers previously vested in the director of licenses under the provisions of RCW 18.53.100 are vested in the optometry board. [1963 c 25 § 15.]

**18.54.900 Short title.** This act may be known and cited as the "optometry board act." [1963 c 25 § 16.]

**18.54.910 Severability—**—1963 c 25. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1963 c 25 § 17.]

**18.54.920 RCW 43.24.060, 43.24.110 and 43.24.120 not applicable to optometry.** The provisions of RCW 43.24.060, 43.24.110 and 43.24.120 are not applicable to the licensing and regulation of the practice of optometry. [1963 c 25 § 18.]

*Examining committee reconstituted as optometry board: RCW 18.54.020.*

## Chapter 18.57 OSTEOPATHY

### Sections

- 18.57.020 Certification—Forms—Qualifications to practice—Validation of prior certificates.
- 18.57.030 Licensing required—Penalty—Payment of fines—Remittance of justice court fines, fees, penalties and forfeitures.
- 18.57.040 Licensing exemptions.
- 18.57.050 Fees—Disposition—Bond—Expenses.
- 18.57.080 Examinations.
- 18.57.085 Waiver of examination in basic sciences.
- 18.57.100 License—Registration—Change of residence—Filing—Penalty.
- 18.57.110 License—Record—Report.
- 18.57.130 Licenses under preexisting laws or other states—Osteopathy defined—Fees.
- 18.57.140 Advertising regulations.
- 18.57.145 Use of designations in combination with name.
- 18.57.150 Applicability of health regulations.
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- 18.57.180 Refusal or revocation of certificate for unprofessional conduct—Procedure.
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- 18.57.250 Physician members of committees to evaluate credentials and qualifications of physicians—Immunity from civil suit.
- 18.57.260 Physicians filing charges or presenting evidence before committees, boards or hospitals—Immunity from civil suit.
- 18.57.270 Records of medical society or hospital committee or board not subject to civil process.
- 18.57.900 Interchangeable terms.
- 18.57.910 Repeal.

**Reviser's note:** "Director" and "director of licenses" have been substituted for "board", "board of examiners", "secretary" and "secretary-treasurer" throughout this chapter, since the board of osteopathic examiners was abolished by 1921 c 7 § 135 and its powers and duties were transferred to the director of licenses by 1921 c 7 § 96 (RCW 43.24.020), which powers and duties subsequently devolved to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest.

*Abortion: Chapter 9.02 RCW.*

*Actions against, limitation of: RCW 4.16.350.*

*Administering drugs, inoculations, etc., by registered nurses permitted: RCW 18.88.290.*

*Crimes relating to pregnancy and childbirth: RCW 9A.32.060.*

*Death due to ministrations by intoxicated physician: RCW 9A.32.050-9A.32.070.*

*Examining committee in basic sciences: Chapter 43.74 RCW.*

*Lien of doctors: Chapter 60.44 RCW.*

*Rebating by practitioners of healing professions prohibited: Chapter 19.68 RCW.*

**18.57.020 Certification—Forms—Qualifications to practice—Validation of prior certificates.** A certificate shall be issued by the director of licenses authorizing the holder thereof to practice osteopathy and surgery, including the use of internal medicine and drugs, and shall be the only type of certificate issued. All certificates to practice osteopathy or osteopathy and surgery, including the use of internal medicine and drugs, heretofore issued shall remain in full force and effect.

In order to procure a certificate to practice osteopathy and surgery, the applicant for such certificate must file with said director, satisfactory testimonials of good moral character, and a diploma issued by some legally chartered school of osteopathy and surgery, the requirements of which shall have been at the time of granting such diploma in no particular less than those prescribed by the American Osteopathic Association and the American Association of Osteopathic Colleges, or satisfactory evidence of having possessed such diploma, and he must file with such diploma an application sworn to before some person authorized to administer oaths, and attested by the hand and seal of such officer, if he have a seal, stating that he is the person named in said diploma, that he is the lawful holder thereof, and that the same was procured in the regular course of instruction and examination, without fraud or misrepresentation. The said application shall be made upon a blank furnished by said director, and it shall contain such information concerning said medical instruction and the preliminary education of the applicant as said director may by rule provide. Applicants who have failed to meet the requirements must be rejected.

An applicant for a license to practice osteopathy and surgery must furnish evidence that he has served for not less than one year as interne in a thoroughly equipped hospital which shall have had at least twenty-five beds for each interne devoted to the treatment of medical, surgical, gynecological and special diseases, and he also must have had a service of six weeks, or the equivalent thereof in the maternity department of the same or some other hospital, during which time he shall have attended or participated in the attendance upon not less than six confinements. He shall furnish evidence that he has had sufficient experience in and a practical working knowledge of pathology, and the administering of internal medicine and drugs including anesthetics. [1959 c 110 § 1; 1919 c 4 § 4; RRS § 10056. Cf. 1909 c 192 § 6. Formerly RCW 18.57.020, 18.57.060, 18.57.070 and 18.57.090.]

*Examination in basic sciences required: Chapter 43.74 RCW.*

**18.57.030 Licensing required—Penalty—Payment of fines—Remittance of justice court fines, fees,**

**penalties and forfeitures.** Any person who shall practice or attempt to practice, or hold himself out as practicing osteopathy or osteopathy and surgery in this state, without having, at the time of so doing, a valid, unrevoked certificate as provided in this chapter, shall be guilty of a misdemeanor. In each such conviction the fine shall be paid, when collected, to the state treasurer, and shall constitute a special fund to be used by the director, for the prosecution of illegal practitioners as defined in this chapter, and the said director is authorized to prosecute all persons guilty of a violation of the provisions of this chapter: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1969 ex.s. c 199 § 16; 1919 c 4 § 14; RRS § 10066. Cf. 1909 c 192 § 14.]

*Basic science certificate required: Chapter 43.74 RCW.*

**18.57.040 Licensing exemptions.** Nothing in this chapter shall be construed to prohibit service in the case of emergency, or the domestic administration of family remedies, or the practice of midwifery; nor shall this chapter apply to any commissioned medical officer in the United States army, navy, or marine hospital service, in the discharge of his official duties; nor to any licensed dentist when engaged exclusively in the practice of dentistry; nor shall this chapter apply to any practitioner from any other state or territory in which he resides: *Provided*, That such practitioner shall not open an office or appoint a place of meeting patients or receive calls within the limits of this state.

This chapter shall not be construed to apply in any manner to any other system or method of treating the sick or afflicted or to apply to or interfere in any way with the practice of religion or any kind of treatment by prayer. [1919 c 4 § 19; RRS § 10071. FORMER PART OF SECTION: 1921 c 82 § 1, part; 1919 c 4 § 17, part; RRS § 10069, part, now codified in RCW 18.57.130.]

*Administering of drugs, inoculations, etc., by registered nurses permitted: RCW 18.88.290.*

*Midwifery: Chapter 18.50 RCW.*

**18.57.050 Fees—Disposition—Bond—Expenses.** Each applicant on making application shall pay the director a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended which shall be paid to the state treasurer by said director and used to defray the expenses and compensation of said director. In case the applicant's credentials are insufficient, or in case he does not desire to take the examination, the sum of fifteen dollars shall be returned. All persons licensed to practice osteopathy or osteopathy and surgery within this state who are engaged in active practice shall pay on or before the first day of May of each year to the director a renewal license fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. Licenses not so renewed will not be valid. The director shall thirty days or more before May 1st of each year mail to all active practitioners of osteopathy or osteopathy and surgery in this state at their last known address a notice of the fact that

the renewal fee will be due on or before the first of May. Nothing in this chapter shall be construed so as to require that the receipt shall be recorded as original licenses are required to be recorded. [1975 1st ex.s. c 30 § 58; 1971 ex.s. c 266 § 11; 1919 c 4 § 6; RRS § 10058. Cf. 1909 c 192 § 7. Formerly RCW 18.57.050 and 18.57.120.]

**18.57.080 Examinations.** In addition to the requirements above set forth, such applicants for a certificate must be personally examined by said director as to their qualifications. The examination shall be conducted in the English language, shall be practical in character and designed to discover the applicant's fitness to practice osteopathy, and shall be in whole or in part in writing on the following fundamental subjects, to wit: Anatomy, histology, gynecology, pathology, bacteriology, chemistry, toxicology, physiology, obstetrics, general diagnosis, hygiene, principles and practice of osteopathy and any other branches thereof that the director shall deem advisable: *Provided*, That those seeking a certificate to practice osteopathy and surgery shall also take an examination in surgery and the management of surgical cases (including anaesthetics) before being granted said certificate. Examination in each subject shall consist of not less than ten questions, answers to which shall be marked upon a scale of zero to ten. All applicants must obtain not less than sixty percent in any one subject. The examination papers shall form a part of the records of the director and shall be kept on file by the director for a period of one year after examination. In said examination the applicant shall be known and designated by number only, and the name attached to the number shall be kept secret. [1919 c 4 § 5; RRS § 10057. Cf. 1909 c 192 § 6. Formerly RCW 18.57.080 and 18.57.090, part.]

**Reviser's note:** The last sentence of 1919 c 4 § 5 reads: "In said examination the applicant shall be known and designated by number only, and the name attached to the number shall be kept secret until after the board has finally voted upon the application."

This sentence has been changed to refer to the director of licenses as the board of osteopathic examiners was abolished and its powers and duties transferred to the director of licenses, which powers and duties subsequently devolved to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest.

*Basic sciences examination required: Chapter 43.74 RCW.*

**18.57.085 Waiver of examination in basic sciences.** The board or committee may, in its discretion, waive the examination in basic sciences required under chapter 43.74 RCW of persons applying for a license to practice osteopathy or osteopathy and surgery if, in the sole discretion of the board or committee, the applicant has successfully passed an examination of equal or greater difficulty than the examination being waived. [1971 ex.s. c 227 § 3.]

*Effect of waiver: RCW 43.74.037.*

**18.57.100 License—Registration—Change of residence—Filing—Penalty.** Every person holding a certificate authorizing him to practice osteopathy or osteopathy and surgery in this state, must have it recorded in the office of the county clerk of the county in

which the holder of said certificate is practicing his profession, and the fact of such recording shall be indorsed on the certificate by the county clerk recording the same. Every such person, on each change of his residence, must have the certificate recorded in the county to which he shall have changed his residence. The absence of such record shall be prima facie evidence of the want of possession of such certificate. And any person holding a certificate to practice osteopathy or osteopathy and surgery in this state who shall attempt to practice osteopathy or osteopathy and surgery in this state without first having filed his certificate with the county clerk as herein provided, shall be guilty of a misdemeanor. [1919 c 4 § 8; RRS § 10060.]

**18.57.110 License—Record—Report.** The county clerk shall keep in a book provided for the purpose, a complete list of the certificates recorded by him, with the date of the record; and said book shall be open to public inspection during his office hours. The county clerk shall forthwith give written notice to the director, notifying him of the name of each licensee recorded after this chapter shall go into effect, together with the date of such recording. [1919 c 4 § 9; RRS § 10061. Prior: 1909 c 192 § 10.]

**Reviser's note:** See note following chapter digest.

**18.57.130 Licenses under preexisting laws or other states—Osteopathy defined—Fees.** Any person who holds a license authorizing him to practice osteopathy from a board of medical examiners heretofore existing, under the provision of any laws of this state, past or present, shall be entitled to practice osteopathy in this state the same as if issued under this chapter, and any person, who shall have been examined and licensed to practice osteopathy by a state board of osteopathic examiners of another state or the duly constituted authorities of another state authorized to issue licenses to practice osteopathy upon examination, shall be entitled to receive a license to practice osteopathy in this state upon the payment of a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended to the state treasurer and filing a copy of his license in such other state, duly certified by the authorities granting the license to be a full, true, and correct copy thereof, and certifying also that the standard of requirements adopted by such authorities as provided by the law of such state is equal to that provided for by the provisions of this chapter: *Provided*, That no license shall issue without examination to any person who has previously failed in an examination held in this state: *Provided, further*, That all licenses herein mentioned may be revoked for unprofessional conduct, in the same manner and upon the same grounds as if issued under this chapter: *Provided, further*, That the term osteopathy, as used in this chapter, shall be held to be the practice and procedure as taught and recognized by the regular colleges of osteopathy: *Provided, further*, That no one shall be permitted to practice surgery who has not a license therefor. [1975 1st ex.s. c 30 § 59; 1921 c 82 § 1; 1919 c 4 § 17; RRS § 10069. Formerly RCW 18.57.010, 18.57.040, part, and 18.57.130.]

**18.57.140 Advertising regulations.** On all cards, signs, letterheads, envelopes and billheads used by those licensed by this chapter to practice osteopathy or osteopathy and surgery the word "osteopathic" shall always immediately precede the word "physician" and if the word "surgeon" is used in connection with said name, the word "osteopathic" shall also immediately precede said word "surgeon." [1919 c 4 § 20; RRS § 10072.]

**18.57.145 Use of designations in combination with name.** No provision of this chapter or of any other law shall prevent any person who holds a valid, unrevoked certificate to practice osteopathy from using in combination with his name the designation "Osteopathic Physician and Surgeon" or the abbreviation of his professional degree, Doctor of Osteopathy (D.O.), provided he hold such professional degree, or any combination thereof upon his stationery, in any professional lists or directories or in other places where the same may properly appear as permitted within the canons of ethics now or hereafter promulgated by the Washington State Osteopathic Association or its successors. [1959 c 110 § 2.]

**18.57.150 Applicability of health regulations.** All persons granted licenses or certificates under this chapter shall be subject to the state and municipal regulations relating to the control of contagious diseases, the reporting and certifying to births and deaths, and all matters pertaining to public health; and all such reports shall be accepted as legal. [1919 c 4 § 18; RRS § 10070.]

*Public health and safety: Title 70 RCW.*

*Vital statistics: Chapter 70.58 RCW.*

**18.57.160 Unlawful practices—Penalty.** Every person filing for record, or attempting to file for record, the certificate issued to another, falsely claiming himself to be the person named in such certificate, or falsely claiming himself to be the person entitled to the same, shall be guilty of a felony, and, upon conviction thereof, shall be subject to such penalties as are provided by the laws of this state for the crime of forgery. [1919 c 4 § 15; RRS § 10067. Cf. 1909 c 192 § 15.]

*Forgery: RCW 9A.60.020.*

**18.57.170 Unprofessional conduct.** The words "unprofessional conduct," as used in this chapter, are hereby declared to mean:

- (1) The procuring, or aiding or abetting in procuring a criminal abortion.
- (2) The wilfully betraying of a professional secret.
- (3) All advertising of any kind or character other than the carrying of a professional card, window or street sign.
- (4) All advertising of any medicine or of any means whereby the monthly periods of women can be regulated or the menses reestablished if suppressed.
- (5) Conviction of any offense involving moral turpitude, in which case the record of such conviction shall be conclusive evidence.
- (6) Habitual intemperance.
- (7) The personation of another licensed practitioner of a like or different name.

(8) Exploiting or advertising through the press, or by the use of handbills, circulars or other periodicals, other than professional cards, giving only name, address, profession, office hours and telephone connections.

(9) The use or prescription for the use of narcotic drugs, or dangerous drugs described in \*RCW 69.40-.060, in any way other than for therapeutic purposes.

(10) Repeated acts of immorality, or repeated acts of gross misconduct in the practice of the profession.

(11) Unprofessional conduct as defined in chapter 19.68 RCW.

(12) Aiding or abetting an unlicensed person to practice osteopathy.

(13) Declaration of mental incompetency by a court of competent jurisdiction.

(14) Fraud or deceit in the obtaining of a license to practice osteopathy. [1963 c 142 § 2; 1919 c 4 § 11; RRS § 10063. Cf. 1909 c 192 § 11.]

*\*Reviser's note: "RCW 69.40.060" was repealed by 1971 ex.s. c 308 § 69.50.606.*

*Abortion: Chapter 9.02 RCW.*

*False personation: RCW 9A.60.040.*

*Narcotics: Chapter 69.32 RCW.*

**18.57.180 Refusal or revocation of certificate for unprofessional conduct—Procedure.** Said director must refuse a certificate to any applicant guilty of unprofessional conduct; but before such refusal the applicant must be cited by citation. No such citation shall be issued except upon a sworn complaint filed with the director, charging the applicant with having been guilty of unprofessional conduct, and setting forth the particular act constituting such unprofessional conduct. On filing of such complaint the director must forthwith issue a citation and make the same returnable at least thirty days next after filing the complaint. Such citation shall notify the applicant of the time and place when and where the matter of said unprofessional conduct shall be heard, the particular unprofessional conduct with which the applicant is charged, and that the applicant shall file his written answer, under oath, within twenty days next after service upon him of said citation, or default will be taken against him, and his application for certificate refused. The attendance of witnesses at such hearing shall be compelled by subpoenas issued by the director; and said director shall in no case refuse to issue any such subpoena, upon a fee of twenty cents being paid him for each subpoena. Said citation and said subpoenas shall be served in accordance with the statutes of this state then in force as to the service of summons and subpoenas generally and all provisions of the statutes of this state then in force relating to subpoenas are hereby made applicable to the subpoenas provided for herein. If any person refuses to obey a subpoena served upon him in accordance with the statutes of this state then in force providing for the manner of service of subpoenas, the fact of such refusal shall be certified by the director, to the superior court of the county in which the service was had and the said court shall thereupon proceed to hear said matter in accordance with the statutes of this state then in force as to contempt for disobedience of process

of the court, and should said court find that the subpoena had been legally served and that the party so served has wilfully disobeyed the same, it shall proceed to impose such penalty as provided in cases of contempt of court. In all cases of alleged unprofessional conduct arising under this chapter, testimonies of witnesses may be taken, the same as in civil cases, and all the provisions of the statutes of this state then in force as to the taking of testimony are hereby made applicable to the taking of depositions under this section. If the applicant shall fail to file with the director his answer, under oath, to the charges made against him, within twenty days after service on him of said citation or within such further time as the director may give him, and the charges on their face be deemed sufficient by the director, default shall be entered against him and his application refused. If the charges on their face be deemed sufficient by the director, and issue be joined thereon by answer, the director shall proceed to determine the matter, and to that end shall hear such evidence as may be adduced before it; and if it appear to the satisfaction of the director that the applicant is guilty as charged, no certificate shall be issued to him. No certificate shall be refused on the grounds of unprofessional conduct unless the applicant has been guilty of such conduct within two years next preceding his application. Whenever any holder of a certificate to practice osteopathy or osteopathy and surgery in this state is guilty of unprofessional conduct, as the same is defined in this chapter, and said unprofessional conduct has been brought to the attention of the director in the manner hereinafter pointed out, or whenever a certificate has been procured by fraud or misrepresentation, or issued by mistake, it shall be his duty to, and he must, revoke the same at once, and the holder of said certificate shall not be permitted to practice osteopathy or osteopathy and surgery in this state. But no revocation shall be made unless such holder is cited to appear and the same proceedings are had as is hereinbefore provided in this section in case of refusal to issue certificates. Said director in all cases of revocation shall enter on his register the fact of such revocation and shall certify the fact of such revocation to the county clerk of each county in which the certificate of the person whose certificate has been revoked is recorded; and said clerk must thereupon write upon the margin or across the face of his register the certificate of such person, the following: "This certificate was revoked on the ----- day of -----, -----" giving the day, month and year of revocation in accordance with certification to him by the director. The record of such revocation so made by said county clerk shall be prima facie evidence of the fact thereof, and of the regularity of all the proceedings of said director in the matter of said revocation. From the time of the revocation of a certificate the holder thereof shall be disqualified from practicing osteopathy or surgery in this state. [1919 c 4 § 10; RRS § 10062. Cf. 1909 c 192 § 11. Formerly RCW 18.57.180 through 18.57.230 and 18.57.240, part.]

**Reviser's note:** "Director" has been substituted herein for references to the board and officers because the board of osteopathic examiners was abolished by the administrative code of 1921 (1921 c 7 §§ 96 and 135) and its powers and duties were transferred to the director of

licenses, which powers and duties subsequently devolved to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest. The session law text (1919 c 4 § 10) reads as follows: "Sec. 10. Said board must refuse a certificate to any applicant guilty of unprofessional conduct; but before such refusal the applicant must be cited by citation, signed by the secretary-treasurer of the board, and sealed with its seal. No such citation shall be issued except upon a sworn complaint filed with the secretary-treasurer of the board, charging the applicant with having been guilty of unprofessional conduct, and setting forth the particular act constituting such unprofessional conduct. On filing of such complaint the secretary-treasurer must forthwith issue a citation and make the same returnable at a regular or special meeting of said board, occurring a least thirty days next after filing the complaint. Such citation shall notify the applicant of the time and place when and where the matter of said unprofessional conduct shall be heard, the particular unprofessional conduct with which the applicant is charged, and that the applicant shall file his written answer, under oath, within twenty days next after service upon him of said citation, or default will be taken against him, and his application for certificate refused. The attendance of witnesses at such hearing shall be compelled by subpoenas issued by the secretary-treasurer of the board under its seal; and said secretary-treasurer shall in no case refuse to issue any such subpoena, upon a fee of twenty cents being paid him for each subpoena. Said citation and said subpoenas shall be served in accordance with the statutes of this state then in force as to the service of summons and subpoenas generally and all provisions of the statutes of this state then in force relating to subpoenas are hereby made applicable to the subpoenas provided for herein. If any person refuses to obey a subpoena served upon him in accordance with the statutes of this state then in force providing for the manner of service [of] subpoenas, the fact of such refusal shall be certified by the secretary-treasurer of said board, under the seal thereof, to the superior court of the county in which the service was had and the said court shall thereupon proceed to hear said matter in accordance with the statutes of this state then in force as to contempt for disobedience of process of the court, and should said court find that the subpoena had been legally served and that the party so served has wilfully disobeyed the same, it shall proceed to impose such penalty as provided in cases of contempt of court. In all cases of alleged unprofessional conduct arising under this act, testimonies of witnesses may be taken, the same as in civil cases, and all the provisions of the statutes of this state then in force as to the taking of testimony are hereby made applicable to the taking of depositions under this section. If the applicant shall fail to file with the secretary-treasurer of said board his answer, under oath, to the charges made against him, within twenty days after service on him of said citation or within such further time as the board may give him, and the charges on their face be deemed sufficient by the board, default shall be entered against him and his application refused. If the charges on their face be deemed sufficient by the board, and issue be joined thereon by answer, the board shall proceed to determine the matter, and to that end shall hear such evidence as may be adduced before it; and if it appear to the satisfaction of the board that the applicant is guilty as charged, no certificate shall be issued to him. No certificate shall be refused on the grounds of unprofessional conduct unless the applicant has been guilty of such conduct within two years next preceding his application. Whenever any holder of a certificate to practice osteopathy or osteopathy and surgery in this state is guilty of unprofessional conduct, as the same is defined in this act, and said unprofessional conduct has been brought to the attention of the board in the manner hereinafter pointed out, or whenever a certificate has been procured by fraud or misrepresentation, or issued by mistake, it shall be their duty to, and they must, revoke the same at once, and the holder of said certificate shall not be permitted to practice osteopathy or osteopathy and surgery in this state. But no revocation shall be made unless such holder is cited to appear and the same proceedings are had as is hereinbefore provided in this section in case of refusal to issue certificates. Said secretary-treasurer in all cases of revocation shall enter on his register the fact of such revocation and shall certify the fact of such revocation under the seal of the board, to the county clerk of each county in which the certificate of the person whose certificate has been revoked is recorded; and said clerk must thereupon write upon the margin or across the face of his register the certificate of such person, the following: 'This certificate was revoked on the ----- day of -----, -----' giving the day, month and year of revocation in accordance with certification to him by the secretary-treasurer. The record of such revocation so made by said county clerk shall be prima facie evidence of the fact thereof,



and of the regularity of all the proceedings of said board in the matter of said revocation. From the time of the revocation of a certificate the holder thereof shall be disqualified from practicing osteopathy or surgery in this state." [1919 c 4 § 10.]

**18.57.240 Refusal or revocation of license—Record of refusal or revocation.** In any case of the refusal or revocation of a license by said director under the provisions of this chapter, said director shall file a brief and concise statement of the grounds and reasons for such refusal or revocation in the office of the director, which said statement, together with the decision of the committee appointed under RCW 43.24.110, in writing, shall remain of record in said office. [1919 c 4 § 12; RRS § 10064. Cf. 1909 c 192 § 12. FORMER PART OF SECTION: 1919 c 4 § 10, part; RRS § 10062, part, now codified in RCW 18.57.180.]

**Reviser's note:** 1919 c 4 § 12 reads as follows: "Sec. 12. In any case of the refusal or revocation of a license by said board under the provisions of this act, said board shall file a brief and concise statement of the grounds and reasons for such refusal or revocation in the office of the secretary-treasurer of said board, which said statement, together with the decision of said board, in writing, shall remain of record in said office."

This section has been changed to refer to the director of licenses and the committee appointed under RCW 43.24.110 as the board of osteopathic examiners was abolished and its powers and duties transferred to the director of licenses, which powers and duties subsequently devolved to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest.

**18.57.250 Physician members of committees to evaluate credentials and qualifications of physicians—Immunity from civil suit.** See RCW 4.24.240.

**18.57.260 Physicians filing charges or presenting evidence before committees, boards or hospitals—Immunity from civil suit.** See RCW 4.24.250, 4.24.260.

**18.57.270 Records of medical society or hospital committee or board not subject to civil process.** See RCW 4.24.250.

**18.57.900 Interchangeable terms.** The words "certificates" and "licenses" shall be known as interchangeable terms in this chapter. [1919 c 4 § 21; RRS § 10073.]

**18.57.910 Repeal.** All acts and parts of acts in conflict herewith are hereby repealed. [1919 c 4 § 22.]

### Chapter 18.57A

#### OSTEOPATHIC PHYSICIANS' ASSISTANTS

##### Sections

- 18.57A.010 Definitions.
- 18.57A.020 Board to adopt rules and regulations fixing qualifications and restricting practice—Contents.
- 18.57A.030 Limitations on practice by osteopathic physicians' assistants.
- 18.57A.040 Osteopathic physician's application for assistant—Fee—Approval or rejection by board—Hearing.
- 18.57A.050 Osteopathic physician's liability, responsibility.
- 18.57A.060 Limitations on health care services.

**18.57A.010 Definitions.** (1) "Osteopathic physician's assistant" means a person who has satisfactorily completed a board-approved training program designed to

prepare persons to practice osteopathic medicine to a limited extent;

(2) "Board" means the committee of osteopathic examiners;

(3) "Practice medicine" shall have the meaning defined in RCW 18.57.130. [1971 ex.s. c 30 § 7.]

**Severability—1971 ex.s. c 30:** See note following RCW 18.71A.010.

**18.57A.020 Board to adopt rules and regulations fixing qualifications and restricting practice—Contents.** The board shall adopt rules and regulations fixing the qualifications and the educational and training requirements for persons who may be employed as osteopathic physician's assistants or who may be enrolled in any physician's training program.

The board shall, in addition, adopt rules and regulations governing the extent to which physician's assistants may practice medicine during training and after successful completion of a training course. Such regulations shall provide:

(1) That the practice of an osteopathic physician's assistant shall be limited to the performance of those services for which he is trained; and

(2) That each osteopathic physician's assistant shall practice medicine only under the supervision and control of an osteopathic physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physician at the place where services are rendered. [1971 ex.s. c 30 § 8.]

**Severability—1971 ex.s. c 30:** See note following RCW 18.71A.010.

**18.57A.030 Limitations on practice by osteopathic physicians' assistants.** An osteopathic physician's assistant as defined in this chapter may practice osteopathic medicine in this state only after authorization by the board and only to the extent permitted by the board. An osteopathic physician's assistant shall be subject to discipline under RCW 18.57.170. [1971 ex.s. c 30 § 9.]

**Severability—1971 ex.s. c 30:** See note following RCW 18.71A.010.

**18.57A.040 Osteopathic physician's application for assistant—Fee—Approval or rejection by board—Hearing.** No osteopathic physician practicing in this state shall utilize the services of an osteopathic physician's assistant without the approval of the board.

Any osteopathic physician licensed in this state may apply to the board for permission to use the services of an osteopathic physician's assistant. The application shall be accompanied by a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, shall detail the manner and extent to which the physician's assistant would be used and supervised, shall detail the education, training, and experience of the osteopathic physician's assistant and shall provide such other information in such form as the board may require.

The board may approve or reject such applications. In addition, the board may modify the proposed utilization



of the osteopathic physician's assistant, and approve the application as modified. No such approval shall extend for more than one year, but approval once granted may be renewed annually upon payment of a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. Whenever it appears to the board that an osteopathic physician's assistant is being utilized in a manner inconsistent with the approval granted, the board may withdraw such approval. In the event a hearing is requested upon the rejection of an application, or upon the withdrawal of an approval, a hearing shall be conducted in accordance with RCW 18.57.180. [1975 1st ex.s. c 30 § 60; 1971 ex.s. c 30 § 10.]

**Severability**—1971 ex.s. c 30: See note following RCW 18.71A.010.

**18.57A.050 Osteopathic physician's liability, responsibility.** No osteopathic physician who uses the services of an osteopathic physician's assistant in accordance with and within the terms of any permission granted by the medical examining board shall be considered as aiding and abetting an unlicensed person to practice osteopathic medicine within the meaning of RCW 18.57.080 or 18.57.030: *Provided, however,* That any physician shall retain professional and personal responsibility for any act which constitutes the practice of medicine as defined in RCW 18.57.130 when performed by a physician's assistant in his employ. [1971 ex.s. c 30 § 11.]

**Severability**—1971 ex.s. c 30: See note following RCW 18.71A.010.

**18.57A.060 Limitations on health care services.** No health care services may be performed under this chapter in any of the following areas:

(1) The measurement of the powers or range of human vision, or the determination of the accommodation and refractive state of the human eye or the scope of its functions in general, or the fitting or adaptation of lenses or frames for the aid thereof.

(2) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training or orthoptics.

(3) The prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the human eye.

(4) Nothing in this section shall preclude the performance of routine visual screening.

(5) The practice of dentistry or dental hygiene as defined in chapter 18.32 and 18.29 RCW respectively. The exemptions set forth in RCW 18.32.030, paragraphs (1) and (8), shall not apply to a physician's assistant.

(6) The practice of chiropractic as defined in chapter 18.25 RCW including the adjustment or manipulation of the articulations of the spine.

(7) The practice of podiatry as defined in chapter 18.22 RCW. [1973 c 77 § 20; 1971 ex.s. c 30 § 12.]

**Severability**—1971 ex.s. c 30: See note following RCW 18.71A.010.

## Chapter 18.64 PHARMACISTS

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18.64.910	Severability—1935 c 98.
18.64.911	Severability—1963 c 38.
18.64.920	Repealer—1935 c 98.

**Reviser's note:** (1) "Board" and "board of pharmacy" have been substituted throughout this chapter for "director" and "director of licenses". The original board of pharmacy created by chapter 121, Laws of 1899 was abolished by 1921 chapter 7 § 96 and its powers and duties were by that act transferred to the director of licenses. The present board of pharmacy was created by chapter 98, Laws of 1935, which transferred to the board the powers formerly vested in the old board and in the director of licenses. The powers and duties of the director of licenses have devolved to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest.

(2) "This act" and similar phrases have been changed throughout chapter 18.64 RCW to read "this chapter" Chapter 18.64 RCW consists entirely of 1899 c 121, as amended, except 1939 c 28 which is codified as RCW 18.64.245 through 18.64.247.

*Chiropodists may issue prescriptions:* RCW 18.22.185.

*Dentists, filling prescriptions issued by:* RCW 18.32.320.

*Drugs and cosmetics: Chapter 69.04 RCW.*

*Poisons and dangerous drugs, dispensing and sale: Chapter 69.40 RCW.*

*Rebating by vendors of medical supplies prohibited: Chapter 19.68 RCW.*

*Regulation of practice of medicine and surgery, sale of drugs and medicines: State Constitution Art. 20 § 2.*

*Unlawful to refill trademarked containers: RCW 19.76.110.*

**18.64.001 State board of pharmacy—Creation—Membership—Oath—Removal—**

**Vacancies.** There shall be a state board of pharmacy consisting of five members, to be appointed by the governor by and with the advice and consent of the senate. Four of the members shall be designated as pharmacist members and one of the members shall be designated a public member.

Each pharmacist member shall be a citizen of the United States and a resident of this state, and at the time of his appointment shall have been a duly registered pharmacist under the laws of this state for a period of at least five consecutive years immediately preceding his appointment and shall at all times during his incumbency continue to be a duly licensed pharmacist: *Provided*, That subject to the availability of qualified candidates the governor shall appoint pharmacist members representative of the areas of practice and geographically representative of the state of Washington.

The public member shall be a citizen of the United States and a resident of this state. The public member shall be appointed from the public at large, but shall not be affiliated with any aspect of pharmacy.

Members of the board shall hold office for a term of four years, and the terms shall be staggered so that the terms of office of not more than two members will expire simultaneously on the third Monday in January of each year.

No person who has been appointed to and served for two four year terms shall be eligible for appointment to the board.

Each member shall qualify by taking the usual oath of a state officer, which shall be filed with the secretary of state, and each member shall hold office for the term of his appointment and until his successor is appointed and qualified.

Each member shall be subject to removal at the pleasure of the governor, but no such removal shall be made by the governor unless he furnishes the member with a letter setting forth his reasons for the removal, and files a copy thereof with the secretary of state where it shall remain subject to public inspection.

In case of the resignation or disqualification of a member, or a vacancy occurring from any cause, the governor shall appoint a successor for the unexpired term. [1973 1st ex.s. c 18 § 1; 1963 c 38 § 16; 1935 c 98 § 1; RRS § 10132. Formerly RCW 43.69.010.]

**18.64.003 State board of pharmacy—Meetings—Chairman—Remuneration.** Members of the board shall meet at such places and times as it shall determine and as often as necessary to discharge the duties imposed upon it. The board shall elect a chairman from among its members. Each member shall receive

twenty-five dollars a day for each day actually spent in the performance of his official duties and in going to and returning from the place of such performance, together with travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 40; 1963 c 38 § 17; 1935 c 98 § 2; RRS § 10132-1. Formerly RCW 43.69.020.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.64.005 State board of pharmacy—Powers and duties.** The board shall:

(1) Regulate the practice of pharmacy, and administer all laws placed under its jurisdiction;

(2) Prepare, grade and administer or determine the nature of and supervise the grading and administration of examinations for applicants for pharmacists' licenses: *Provided*, That this power and duty shall be limited to the four pharmacist members of the board;

(3) Examine, inspect and investigate all applicants for registration as pharmacists or pharmacy interns and to grant certificates of registration to all applicants whom it shall judge to be properly qualified: *Provided*, That this power and duty shall be limited to the four pharmacist members of the board;

(4) Employ an executive officer, inspectors, chemists and other agents to assist it for any purpose which it may deem necessary;

(5) Investigate violations of the provisions of law or regulations under its jurisdiction, and to cause prosecutions to be instituted in the courts upon advice from the attorney general;

(6) Make inspections of all pharmacies and other places including dispensing machines in which drugs or devices are stored, held, compounded, dispensed or sold to the ultimate consumer, to take and analyze any drugs or devices and to seize and condemn any drugs or devices which are adulterated, misbranded or stored, held, dispensed, distributed or compounded in violation or contrary to law;

(7) Have the power to conduct hearings for the revocation or suspension of licenses, permits or registrations and/or to appoint a hearing officer to conduct such hearings;

(8) Assist the regularly constituted enforcement agencies of this state in enforcing all laws pertaining to drugs, narcotics, and practice of pharmacy;

(9) Regulate the distribution of drugs, nostrums, and the practice of pharmacy for the protection and promotion of the public health, safety and welfare by promulgating rules and regulations. Violation of any such rules shall constitute grounds for refusal, suspension or revocation of licenses to practice pharmacy. [1973 1st ex.s. c 18 § 2; 1963 c 38 § 18; 1935 c 98 § 3; RRS § 10132-2. Formerly RCW 43.69.030.]

**18.64.007 State board of pharmacy—Executive officer.** The board shall employ an executive officer who shall not be a member of the board but who shall be a pharmacist duly licensed in Washington. Said officer shall receive compensation as set by the governor, and shall:

- (1) Be responsible for the administration of all professional and public affairs as directed by the board;
- (2) Report to and proceed with the instructions of the board;
- (3) Carry out all policies and instructions emanating from said board;
- (4) Make, keep and be in charge of all records and record books required to be kept by the board, including a register of all who are required to be licensed;
- (5) Attend to the correspondence of the board and perform all other duties as the board may require;
- (6) Receive and receipt for all fees collected. [1963 c 38 § 19. Formerly RCW 43.69.040.]

**18.64.009 State board of pharmacy—Enforcement employees declared to be peace officers—Authority.** Employees of the Washington state board of pharmacy, who are so designated by the board as enforcement officers, are declared to be peace officers and shall be vested with police powers to enforce chapters 69.04, 69.32, 69.33, 69.36 and 69.40 RCW. [1969 ex.s. c 82 § 1.]

**18.64.011 Definitions.** Definitions as used in this chapter:

- (1) "Person" includes individual, partnership, corporation and association.
- (2) "Board" means the Washington state board of pharmacy.
- (3) "Drugs" mean
  - (a) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary.
  - (b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals.
  - (c) Articles (other than food) intended to affect the structure or any function of the body of man or other animals.
  - (d) Articles intended for use as a component of any articles specified in subclauses (a), (b), or (c), but not including devices or their component parts or accessories.
- (4) "Official compendium" shall mean the current revisions of the pharmacopoeia of the United States, homeopathic pharmacopoeia of the United States and national formulary.
- (5) The term "device" means instruments, apparatus and contrivances, including their components, parts and accessories, intended (a) for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals, or (b) to affect the structure or any function of the body of man or other animals.
- (6) The term "federal act" means the federal food, drug and cosmetic act (Title 21, USC 301 et seq., 52 Stat. 1040 et seq.)
- (7) "Narcotic drug," "dangerous drug," "nonproprietary drug"—any drug designated as such under or pursuant to the provisions of Title 69 RCW.
- (8) "Prescription" means a written or oral order for drugs issued by a duly licensed medical practitioner in the course of his professional practice for a legitimate medical purpose.

(9) "Medical practitioner" means a physician, dentist, veterinarian or other person duly authorized and licensed by law to prescribe drugs.

(10) "Pharmacist" means a person duly licensed by the state board of pharmacy to engage in the practice of pharmacy.

(11) "Practice of pharmacy" means the practice of that profession concerned with the art and science of preparing, compounding and dispensing of drugs and devices, whether dispensed on the prescription of a medical practitioner or legally dispensed or sold directly to the ultimate consumer, and shall include the proper and safe storage and distribution of drugs, the maintenance of proper records therefor, and the responsibility of relating information as required concerning such drugs and medicines and their therapeutic values and uses in the treatment and prevention of disease: *Provided, however,* That "practice of pharmacy" shall not include the operations of a manufacturer or wholesaler if licensed as such.

(12) "Pharmacy" means every place properly licensed by the board of pharmacy where the practice of pharmacy is conducted.

(13) The words "drug" and "devices" shall not include surgical or dental instruments or laboratory materials, gas and oxygen, therapy equipment, X-ray apparatus or therapeutic equipment, their component parts or accessories, or equipment, instruments, apparatus or contrivances used to render such articles effective in medical, surgical or dental treatment, or for use or consumption in or for mechanical, industrial, manufacturing or scientific applications or purposes, nor shall the word "drug" include any article or mixture covered by the Washington pesticide act (chapter 15.57 RCW), as enacted or hereafter amended, nor medicated feed intended for and used exclusively as a feed for animals other than man.

(14) The word "poison" shall not include any article or mixture covered by the Washington pesticide act (chapter 15.57 RCW), as enacted or hereafter amended. [1963 c 38 § 1.]

**18.64.020 Licensing required.** It shall hereafter be unlawful for any person to compound or dispense drugs, medicines or poisons, or to institute any pharmacy, store or shop for wholesaling or retailing, compounding or dispensing drugs, medicines or poisons, unless such person shall be a registered pharmacist or shall place in charge of said pharmacy store or shop a registered pharmacist except as hereinafter provided. [1899 c 121 § 1; RRS § 10126. Prior: 1891 c 113 § 1. Formerly RCW 18.67.010, part.]

**Persons licensed under prior laws:** 1923 c 180 § 6: "The director of licenses shall on application issue a certificate of registered pharmacist without examination to a regularly licensed physician and surgeon of the state of Washington: *Provided,* That a physician and surgeon to be entitled to registration as a pharmacist without examination under the provisions of this act shall make application to the director of licenses within six months of the taking effect of this act." [1923 c 180 § 6.]

1923 c 180 § 10: "Unregistered persons who furnish affidavits from two or more registered pharmacists of the state of Washington that they have five or more years continuous experience in pharmacy prior to the enactment of this act and who are actually engaged in pharmacy in the state of Washington at the time of the enactment of this act,

shall have opportunity of passing the examination as provided in section three for registered pharmacists within one year after the date this act takes effect: *Provided*, That time spent by such applicant in the medical department of the army, navy, or marine corps of the United States during the world war shall for the purpose of this act be considered time spent in a pharmacy." [1923 c 180 § 10.]

**18.64.040 Examination fee—Shopkeeper's license, fee, penalty, display of license.** Every applicant for registration by examination under this chapter shall pay the sum of twenty dollars before the examination be attempted: *Provided*, That in case the applicant fails to pass a satisfactory examination he shall have the privilege of a second examination without any charge any time within one year. Every shopkeeper not a pharmacist, desiring to secure the benefits and privileges of this chapter, is hereby required to secure a shopkeeper's license, and he or she shall pay the sum of fifteen dollars for the same, and annually thereafter the sum of fifteen dollars for renewal of the same; and shall at all times keep said license or the current renewal thereof conspicuously exposed in the shop to which it applies. In event such shopkeeper's license fee remains unpaid for ninety days from date due, no renewal or new license shall be issued except upon payment of an additional fifteen dollars. [1971 ex.s. c 201 § 1; 1963 c 38 § 2; 1949 c 153 § 1; 1935 c 98 § 4; 1909 c 213 § 5; 1899 c 121 § 10; Rem. Supp. 1949 § 10135.]

**Severability—1971 ex.s. c 201:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 201 § 9.] This applies to RCW 18.64.040, 18.64.043, 18.64.045, 18.64.047, 18.64.080, 18.64.140 and 18.81.040.

**18.64.043 Drug store, pharmacy and dispensary licenses—Fees—Display—Declaration of ownership and location—Penalties.** The owner of each and every drug store, pharmacy or dispensary, shall pay an original license fee of fifty dollars, and annually thereafter, on or before the first day of June, a fee of ten dollars, for which he shall receive a license and registration of location, which shall entitle the owner to operate such drug store, pharmacy or dispensary at the location specified for the year ending on the next succeeding May 31st, and each such owner shall at the time of filing proof of payment of such fee as hereinafter provided, file with the state board of pharmacy on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of ownership of the pharmacy, drug store, or dispensary mentioned therein. It shall be the duty of the owner to immediately notify the board of any change of location and ownership and to keep the license and registration of location or the renewal thereof properly exhibited in said drug store, pharmacy or dispensary. Failure to conform with this provision shall be deemed a misdemeanor, and upon conviction thereof the owner shall be fined not less than twenty dollars nor more than one hundred dollars; and each day that said failure continues shall be deemed a separate offense. In event such license fee remains unpaid for ninety days from date due, no renewal or new

license shall be issued except upon payment of an additional twenty dollars. [1971 ex.s. c 201 § 2; 1963 c 38 § 3; 1949 c 153 § 4; 1935 c 98 § 8; 1909 c 213 § 12; Rem. Supp. 1949 § 10145. Formerly RCW 18.67.020.]

**Severability—1971 ex.s. c 201:** See note following RCW 18.64.040.

**18.64.045 Manufacturer's, wholesaler's, license—Fees—Display—Declaration of ownership and location—Penalties.** Within thirty days after this section takes effect the owner of each and every place of business which manufactures or sells drugs or drug sundries at wholesale shall pay a license fee of seventy-five dollars, and annually thereafter, on or before the first day of June, a like fee of seventy-five dollars, for which he shall receive a license and registration of location from the state board of pharmacy, which shall entitle such owner to manufacture or to sell drugs and drug sundries at the location specified for the year ending on the next succeeding May 31st, and each such owner shall at the time of payment of such fee file with the state board of pharmacy, on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of the ownership of such place of business mentioned therein. It shall be the duty of the owner to notify immediately the board of any change of location and ownership and to keep the license and registration of location or the renewal thereof properly exhibited in such place of business. Failure to conform with this provision shall be deemed a misdemeanor, and upon conviction thereof, the owner shall be fined not less than twenty dollars nor more than one hundred dollars; and each day that said failure continues shall be deemed a separate offense. In event such license fee remains unpaid for ninety days from date due, no renewal or new license shall be issued except upon payment of an additional seventy-five dollars. [1971 ex.s. c 201 § 3; 1963 c 38 § 4; 1949 c 153 § 5; Rem. Supp. 1949 § 10154-4. Formerly RCW 18.67.140.]

**Severability—1971 ex.s. c 201:** See note following RCW 18.64.040.

**18.64.047 Itinerant vendor's or peddler's license—Fee—Penalties.** Any itinerant vendor, shopkeeper, or any peddler of any medicine, drug, or nostrum, or preparation for the treatment of disease or injury, shall pay a license fee of fifteen dollars annually on or before the first day of June. The state board of pharmacy shall issue a license to such itinerant vendor or peddler on application made to the state board of pharmacy, such license to be signed by the president and attested by the secretary with the seal of the board. Any such itinerant vendor or peddler who shall vend or sell, or offer to sell any such medicine, drug, or nostrum, or preparation without having a license to do so as herein provided, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than twenty dollars and not exceeding one hundred dollars, for such offense, and each sale or offer to sell shall constitute a separate offense. In event such license fee remains unpaid for ninety days from date due, no renewal or new

license shall be issued except upon payment of an additional fifteen dollars. [1971 ex.s. c 201 § 4; 1963 c 38 § 5; 1949 c 153 § 3; 1935 c 98 § 7; 1899 c 121 § 16; Rem. Supp. 1949 § 10141. Formerly RCW 18.60.010 through 18.60.030.]

**Severability**—1971 ex.s. c 201: See note following RCW 18.64.040.

**18.64.050 Duplicate for lost or destroyed license or certificate—Certified documents—Fees.** In the event that a license or certificate issued by the board of pharmacy is lost or destroyed, the person to whom it was issued may obtain a duplicate thereof upon furnishing proof of such fact satisfactory to the board of pharmacy and the payment of a fee of five dollars to the board of pharmacy.

In the event any person desires any certified document to which he is entitled, he shall receive the same upon payment of a fee of five dollars. [1963 c 38 § 6; 1935 c 98 § 9; RRS § 10145-1. FORMER PART OF SECTION: 1935 c 98 § 10; RRS § 10145-2, now codified as RCW 18.64.055.]

**18.64.080 Licensing of pharmacists and interns—Prerequisites—Examinations—Reciprocity—Fees—Renewal.** (1) The state board of pharmacy may license as a pharmacist any person who has filed an application therefor, subscribed by the person under oath or affirmation, containing such information as the board may by regulation require, and who—

(a) Is not less than eighteen years of age and a citizen of the United States;

(b) Has satisfied the board that he is of good moral and professional character, that he will probably carry out the duties and responsibilities required of a pharmacist, and that he is not unfit or unable to practice pharmacy by reason of the extent or manner of his use of alcoholic beverages, narcotic drugs or dangerous drugs or by reason of a physical or mental disability;

(c) Holds a degree in pharmacy granted by a school or college of pharmacy which is accredited by the board of pharmacy;

(d) Has completed the internship requirements as prescribed;

(e) Has satisfactorily passed such examinations given by the board.

(2) The state board of pharmacy shall, at least once in every twelve months, examine in the practice of pharmacy all pharmacy interns, who have completed their educational requirements, who shall make applications for said examination pursuant to regulations promulgated by the board. The said examination shall consist of two parts: The first part being a theoretical examination, and the second part consisting of a practical examination which shall be given to all pharmacy interns who have successfully passed the theoretical examination and have satisfactorily completed their internship requirements. In case of failure at a first examination, the applicant shall have within three years the privilege of a second and third examination. In case of failure in a third examination, the applicant shall not be eligible for further

examination until he has satisfactorily completed additional preparation as directed and approved by the board.

(3) To insure proficiency in the practical aspects of pharmacy, the board shall, by regulation, prescribe internship requirements which must be satisfactorily completed prior to issuance of a pharmacist license. The board shall specify the period of time of not less than six months nor more than one year and when and in what manner the internship shall be served.

(4) The board may, by regulation, accept in lieu of the experience as a registered pharmacy intern as herein required other equivalent experience obtained prior to January 1, 1964.

(5) Any person enrolled as a student of pharmacy in an accredited college may file with the state board of pharmacy an application for registration as a pharmacy intern in which said application he shall be required to furnish such information as the board may, by regulation, prescribe and, simultaneously with the filing of said application, shall pay to the board a fee of one dollar. All certificates issued to pharmacy interns shall be valid for a period not exceeding six years from the date of issue exclusive of time spent in the military service.

(6) To assure adequate practical instruction, pharmacy internship experience as required under this chapter shall be obtained after registration as a pharmacy intern by employment in any licensed pharmacy meeting the requirements promulgated by regulation of the board, and shall include such instruction in the practice of pharmacy as the board by regulation shall prescribe.

(7) The board may, without examination other than one in the laws relating to the practice of pharmacy, license as a pharmacist any person who, at the time of filing application therefor, is and, for at least one year next preceding, has been licensed as a pharmacist in any other state, territory or possession of the United States: *Provided*, That the said person shall produce evidence satisfactory to the board of having had the required secondary and professional education and training and is possessed of good character and morals, who have become registered as pharmacists by examination in other states prior to the time chapter 38, Laws of 1963 takes effect shall be required to satisfy only the requirements which existed in this state at the time they became licensed in such other states: *Provided further*, That the state in which said person is licensed shall under similar conditions grant reciprocal registration as pharmacist without examination to pharmacists duly licensed by examination in this state. Every application under this subsection shall be accompanied by a fee of seventy-five dollars.

(8) Each pharmacy intern applying for examination shall pay to the state board of pharmacy an examination fee of twenty dollars. Upon passing the required examinations and complying with all the rules and regulations of the board and the provisions of this chapter, the board shall grant the applicant registration as a pharmacist and issue to him a certificate qualifying him to enter into the practice of pharmacy.

(9) The board shall provide for, regulate and require all persons registered as pharmacists to renew their registration annually, and shall prescribe the form of such registration and information required to be submitted by all applicants. [1972 ex.s. c 9 § 1. Prior: 1971 ex.s. c 292 § 25; 1971 ex.s. c 201 § 5; 1963 c 38 § 7; 1931 c 56 § 1; 1927 c 253 § 1; 1923 c 180 § 3; RRS § 10126-3. Formerly RCW 18.64.010, part, 18.64.080 and 18.64.090, part.]

**18.64.110 Temporary permits.** The board of pharmacy shall have the power to grant permits to practice pharmacy to persons making application for examination, such permits to be valid only from date of issuance to the date of the next regular examination: *Provided*, That if the applicant fails to pass the examination his permit may be extended to the date of the next examination at the discretion of the board of pharmacy. [1963 c 38 § 8; 1923 c 180 § 9; RRS § 10126-9.]

**18.64.140 License—Annual renewal—Penalty—Display.** Every registered pharmacist who desires to practice his profession shall secure from the board a registration license, the fee for which shall be twenty dollars and the annual renewal fee shall be fifteen dollars payable on or before June 1st of each year. Pharmacists shall pay an additional twenty dollars for the late renewal of their license. Every certificate of registration or the current renewal thereof shall be conspicuously exposed in the drug store, pharmacy or dispensary to which it applies: *Provided*, That commencing with the license year starting June 1, 1971, all pharmacists shall pay the the fees provided for in this section irrespective of when the pharmacist licenses previously issued expire, however those which would have expired after June 1, 1971, shall receive a credit in the amount of the fee previously paid times the ratio of the expressed remaining license period to the total license period. [1971 ex.s. c 201 § 6; 1963 c 38 § 9; 1949 c 153 § 2; 1935 c 98 § 5; 1899 c 121 § 11; Rem. Supp. 1949 § 10136. Formerly RCW 18.64.140 and 18.64.150.]

**Severability—1971 ex.s. c 201:** See note following RCW 18.64.040.

**18.64.160 Refusal, suspension, and revocation of pharmacist's and intern's licenses—Grounds—Procedure.** The board of pharmacy shall have the power to refuse, suspend or revoke the license of any pharmacist or intern upon proof that:

(1) His license was procured through fraud, misrepresentation or deceit;

(2) He has been found guilty, pleaded guilty or entered a plea of nolo contendere to any offense in connection with the practice of pharmacy or involving moral turpitude before any court of record of any jurisdiction;

(3) He is unfit to practice pharmacy because of habitual intemperance in the use of alcoholic beverages, narcotics, dangerous drugs or any other substance which impairs the intellect and judgment to such an extent as to impair the performance of professional duties;

(4) He is unfit or unable to practice pharmacy by reason of a physical or mental disease or disability;

(5) His license to practice pharmacy issued by any other properly constituted licensing authority of any other state has been suspended or revoked;

(6) He has knowingly violated or permitted the violation of any provision of this chapter, Title 69 RCW, or rule and regulation of the board;

(7) He has knowingly engaged in the practice of pharmacy with an unlicensed person or has allowed any unlicensed person to take charge of a pharmacy or engage in the compounding, distribution or dispensing of prescriptions, dangerous drugs or narcotics, except a pharmacy intern in the presence of and under the immediate supervision of a licensed pharmacist;

(8) He has compounded, dispensed, sold or caused the compounding, dispensing or sale of any drug or device which contains more or less than the proportionate quantity of ingredient or ingredients specified by the person who prescribed such drug or device or which is of a brand or trade name other than that specified by the person prescribing such brand or trade name product or which contains an ingredient or ingredients of a brand or trade name other than that specified by the person prescribing such drug or device, unless the expressed consent of the prescriber is first obtained: *Provided, however*, That nothing herein shall be construed to prevent the addition of such inert ingredients as may be required in the art of compounding, preparing, mixing or otherwise producing drugs or devices.

In any case of the refusal, suspension or revocation of a license by said board of pharmacy under the provisions of this chapter, said board shall file a brief and concise statement of the grounds and reasons for such refusal, suspension or revocation in the office of the secretary of said board, which said statement, together with the decision of said board in writing, shall remain of record in said office. Before a license can be refused, suspended or revoked by said board of pharmacy under the provisions of this chapter, a complaint of some person under oath must be filed in the office of the secretary of said board of pharmacy, charging the acts of misconduct and facts complained of against the pharmacist or intern accused, in ordinary and concise language, and thereupon said board shall cause to be served upon such accused a written notice and copy of such complaint, which said notice shall contain a statement of the time and place of hearing of the matters and things set forth and charged in such complaint, and said notice shall be so served at least ten days prior to the time of such hearing. Such accused may appear at such hearing, and defend against the accusations of such complaint, personally and by counsel, and may have the sworn testimony of witnesses taken and present other evidence in his behalf at such hearing, and said board may receive the arguments of counsel at such hearing. [1963 c 38 § 10; 1909 c 213 § 10; RRS § 10143. Formerly RCW 18.64.160 through 18.64.190.]

**18.64.165 Refusal, suspension, and revocation of other licenses.** The board shall have the power to refuse, suspend or revoke the license of any manufacturer, wholesaler, drug store, pharmacy, dispensary, shopkeeper, itinerant vendor or peddler upon proof that:



(1) The license was procured through fraud, misrepresentation or deceit;

(2) The license has violated or has permitted any employee to violate any of the laws of this state relating to drugs, poisons, cosmetics, or drug sundries, or has violated any of the rules and regulations of the board of pharmacy. [1963 c 38 § 15.]

**18.64.200 Refusal, suspension, and revocation of other licenses—Appeal procedure.** In any case of the refusal, suspension or revocation of a license by said board under the provisions of this chapter, appeal may be taken in accordance with the administrative procedure act. [1963 c 38 § 11; 1909 c 213 § 11; RRS § 10144. Formerly RCW 18.64.200 through 18.64.240.]

*Administrative procedure act: Title 34 RCW.*

**18.64.243 Poisons and liquors—Record of sales.** The proprietor of every drug store shall keep in his place of business a record in which shall be entered all sales of the compounds and salts of arsenic, baring, chromium, gold, mercury (calomel excepted), silver, the caustic hydrates of sodium, and potassium, the concentrated mineral acids, hydrocyanic acids and their salts, yellow phosphorus, paris green, the essential oils of almonds, pennyroyal, tansy and savin, croton oil, creosote, chloroform, chloral hydrate, cantharides, or any aconite, belladonna, bitter almonds, colchicum, cotton root, coccolus indicus, conium, cannabis, indica, digitalis, hyoscyamus, ignatia, lobella, nux vomica, opium, physostigma, phytolacca, strophanthus, stramonium, veratrum viride, or any of the poisonous alkaloids or alkaloidal salts or other poisonous principles derived from the foregoing, or veratrine or any other poisonous alkaloids or their salts, or any poisonous compound, combination or preparation thereof, also all wines and spirituous or malt liquors. Said record shall state quantity purchased, the date, for what purpose used, buyer's name and address, and said record at all times during business hours shall be subject to the inspection of the prosecuting attorney or any duly authorized agent of the board of pharmacy: *Provided*, That no such wines, spirituous or malt liquors shall be sold for any other than medicinal, scientific, mechanical or sacramental purposes, and no other license shall be necessary under any ordinance of any municipality for pharmacists to make said sale in compliance with the provisions of this chapter.

He shall not deliver any of said poisons without satisfying himself that the purchaser is aware of its poisonous nature and that the said poison is to be used for a legitimate purpose. [1909 c 213 § 8; 1899 c 121 § 15; RRS § 10140. Prior: 1891 c 153 § 13. Formerly RCW 18.67.050, 18.67.060 and 18.67.070.]

*Strychnine sales, record required: RCW 16.52.193, 16.52.195.*

**18.64.245 Prescription records.** Every proprietor or manager of a pharmacy or drug store shall keep in his place of business a suitable book or file, in which shall be preserved for a period of not less than five years the original of every prescription compounded or dispensed at such pharmacy or drug store, numbering, dating and

filing them in the order in which they were compounded or dispensed, and shall produce the same in court or before any grand jury whenever lawfully required to do so. Such book or file of original prescriptions shall at all times be open for inspection by the prescriber, the board of pharmacy, or any officer of the law. [1939 c 28 § 1; RRS § 6154-1. Formerly RCW 18.67.090.]

**18.64.246 Prescriptions—Labels—Cover or cap to meet safety standards.** To every box, bottle, jar, tube or other container of a prescription which is dispensed there shall be fixed a label bearing the name and address of the pharmacy wherein the prescription is compounded, the corresponding serial number of the prescription, the name of the prescriber, his directions, the name of the medicine and the strength per unit dose, name of patient, date, and initials of the registered pharmacist who has compounded the prescription, and the security of the cover or cap on every bottle or jar shall meet safety standards promulgated by the state board of pharmacy: *Provided*, That at the physician's request, the name and dosage of the drug need not be shown. This section shall not apply to the dispensing of medicines to in-patients in hospitals. [1971 ex.s. c 99 § 1; 1939 c 28 § 2; RRS § 6154-2. Formerly RCW 18.67.080.]

**18.64.247 Penalty for violation of RCW 18.64.245, 18.64.246.** Any person violating or failing to comply with the requirements of RCW 18.64.245 and 18.64.246 shall be guilty of a misdemeanor. [1939 c 28 § 3; RRS § 6154-3. Formerly RCW 18.67.091.]

**18.64.250 Unlawful practices—Penalty for violations—Exceptions.** Any person not a registered pharmacist and not having continuously and regularly in his employ a duly licensed and registered pharmacist within the full meaning of this chapter, who shall retail, compound or dispense medicines, or who shall take, use or exhibit the title of registered pharmacist, shall be deemed guilty of a gross misdemeanor, and each and every day that such prohibited practice continues shall be deemed a separate offense. Every place in which physicians' prescriptions are compounded or dispensed shall be deemed to be a pharmacy, drug store or dispensary, and the same shall at all times be under the personal supervision of a duly licensed and registered pharmacist: *Provided*, That in the absence of the pharmacist from the hospital pharmacy, a registered nurse, designated by the hospital, may obtain from the hospital pharmacy such drugs as are needed in an emergency, and proper record must be kept of such emergency, including date, time, name of prescriber, name of nurse obtaining the drugs, and list of what drugs were obtained; and any person who shall permit the compounding and dispensing of prescriptions, or vending of drugs, medicines or poisons in his store or place of business, except upon the supervision of a registered pharmacist, or any registered pharmacist or shopkeeper registered under this chapter while continuing in business, who shall fail or neglect to procure his renewal of registration, or any person who shall wilfully make any false representations



to procure registration for himself or any other person, or who shall violate any of the provisions of this chapter wilfully and knowingly, shall be deemed guilty of a gross misdemeanor, and each day that such prohibited practice continues shall be deemed a separate offense: *Provided*, That nothing in this chapter or \*chapter 43.69 RCW shall operate in any manner to interfere with the business of any physician and surgeon, duly licensed as such under the laws of this state, in regular practice, or to prevent him from administering to his patients such medicines as he may deem proper, nor with selling proprietary medicine or medicines placed in sealed packages, nor with the exclusive wholesale business of any dealer except as herein provided, nor prevent shopkeepers, itinerant vendors, peddlers or salesmen from dealing in and selling the commonly used medicines, or patent and proprietary medicines, if such medicines are sold in the original packages of the manufacturer, or in packages put up by a registered pharmacist in the manner provided by the state board of pharmacy, if such shopkeeper, itinerant vendor, salesman or peddler shall have obtained a license; but any person who shall take or use or exhibit in or upon any place of business, or advertise in a newspaper, telephone or other directory, by radio, or in any manner the title of pharmacist, assistant pharmacist, druggist, pharmacy, drug store, medicine store, drug department, drugs, drug sundries, or any title or name of like description or import, or display or permit to be displayed upon said place of business the characteristic pharmacy show bottles or globes, either colored or filled with colored liquids, without having continuously and regularly employed in his shop, store, or place of business a pharmacist duly licensed and registered under this chapter, shall be guilty of a misdemeanor, and each and every day that such prohibited practice continues shall be deemed a separate offense. [1963 c 38 § 12; 1935 c 98 § 6; 1909 c 213 § 7; 1899 c 121 § 13; RRS § 10138. Formerly RCW 18.64.250, 18.64.010, 18.64.030, 18.67.030, 18.67.040 and 18.67.130. FORMER PART OF SECTION: 1909 c 213 § 13; RRS § 10146, now codified as RCW 18.64.280.]

\*Reviser's note: "chapter 43.69 RCW" consisting of RCW 43.69-.010, 43.69.020, 43.69.030, and 43.69.040, was recodified as RCW 18.64.001, 18.64.003, 18.64.005, and 18.64.007, respectively.

**18.64.260 Enforcement provisions—Disposition of fines—Remittance of justice court fines, fees, penalties and forfeitures.** All suits for the recovery of the several penalties prescribed in this chapter shall be prosecuted in the name of the state of Washington in any court having jurisdiction, and it shall be the duty of the prosecuting attorney of the county wherein such offense is committed to prosecute all persons violating the provisions of this chapter upon the filing of proper complaint. All penalties collected under the provisions of this chapter shall inure to the school fund of the county in which suit was prosecuted and judgment obtained: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1969 ex.s. c

199 § 17; 1909 c 213 § 9; 1899 c 121 § 17; RRS § 10142.]

**18.64.270 Responsibility for drug purity—Adulteration—Penalty.** Every proprietor of a wholesale or retail drug store shall be held responsible for the quality of all drugs, chemicals or medicines sold or dispensed by him except those sold in original packages of the manufacturer and except those articles or preparations known as patent or proprietary medicines. Any person who shall knowingly, wilfully or fraudulently falsify or adulterate any drug or medicinal substance or preparation authorized or recognized by an official compendium or used or intended to be used in medical practice, or shall wilfully, knowingly or fraudulently offer for sale, sell or cause the same to be sold for medicinal purposes, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine in any sum not less than seventy-five nor more than one hundred and fifty dollars or by imprisonment in the county jail for a period of not less than one month nor more than three months, and any person convicted a third time for violation of any of the provisions of this section may suffer both fine and imprisonment. In any case he shall forfeit to the state of Washington all drugs or preparations so falsified or adulterated. [1963 c 38 § 13; 1899 c 121 § 14; RRS § 10139. Prior: 1891 c 153 § 15. Formerly RCW 18.67-.100 and 18.67.120.]

**18.64.280 General penalty.** Any person who shall violate any of the provisions of chapter 18.64 RCW and for which a penalty is not provided shall be deemed guilty of a gross misdemeanor. [1963 c 38 § 14; 1909 c 213 § 13; RRS § 10146. Formerly RCW 18.64.250, part.]

**18.64.300 Pharmacist members of committees to evaluate credentials and qualifications of pharmacists—Immunity from civil suit.** See RCW 4.24.240.

**18.64.301 Pharmacists filing charges or presenting evidence before pharmaceutical society—Immunity from civil suit.** See RCW 4.24.250, 4.24.260.

**18.64.302 Records of pharmaceutical society not subject to civil process.** See RCW 4.24.250.

**18.64.900 Severability—1923 c 180.** Should any section or parts of sections of this act be declared unconstitutional it shall in no case affect the validity of other provisions of this act. [1923 c 180 § 12.]

**18.64.910 Severability—1935 c 98.** If any section, sentence, clause or part of this act shall be adjudged to be invalid, such adjudication shall not affect the remaining portions of the act. [1935 c 98 § 12.]

**18.64.911 Severability—1963 c 38.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1963 c 38 § 24.]

**Reviser's note:** 1963 c 38 is codified as RCW 18.64.001, 18.64.003, 18.64.005, 18.64.007, 18.64.011, 18.64.040, 18.64.043, 18.64.045, 18.64.047, 18.64.050, 18.64.080, 18.64.110, 18.64.140, 18.64.160, 18.64.165, 18.64.200, 18.64.250, 18.64.270, 18.64.280, 18.64.911, 69.33.410, 69.40.063, 69.40.064 and 69.40.070.

**18.64.920 Repealer—1935 c 98.** All acts and parts of acts in conflict herewith are hereby repealed. [1935 c 98 § 11.]

## Chapter 18.71 PHYSICIANS

### Sections

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*Abortion: Chapter 9.02 RCW.*

*Accepted medical procedures not to include adjustment by hand of any articulation of the spine: RCW 18.25.005.*

*Actions against, limitation of: RCW 4.16.350.*

*Actions for negligence against, evidence and proof required to prevail: RCW 4.24.290.*

*Administering of drugs, inoculations, etc., by registered nurse permitted: RCW 18.88.290.*

*Adoption of children through hospitals, doctors, midwives, etc.: RCW 26.36.040.*

*Crimes relating to pregnancy and childbirth: RCW 9A.32.060.*

*Death due to ministrations by intoxicated physician: RCW 9A.32.050-9A.32.070.*

*Examining committee in basic sciences: Chapter 43.74 RCW.*

*License of doctors as examining physician for contestants in boxing and wrestling matches: RCW 67.08.090.*

*Lien of doctors: Chapter 60.44 RCW.*

*Medical disciplinary board act: Chapter 18.72 RCW.*

*Medical practice investigator, powers and duties: RCW 18.71A.070.*

*Rebating by practitioners of healing professions prohibited: Chapter 19.68 RCW.*

*Regulation of practice of medicine and surgery, sale of drugs and medicines: State Constitution Art. 20 § 2.*

**18.71.010 Definitions.** The following terms used in this chapter shall have the meanings set forth in this section unless the context clearly indicates otherwise:

(1) "Board" means the board of medical examiners.

(2) "Director" means the director of the department of motor vehicles.

(3) "Resident physician" means an individual who has graduated from a school of medicine which meets the requirements set forth in RCW 18.71.055 and is serving a period of postgraduate clinical medical training sponsored by a college or university in this state or by a hospital accredited by this state. For purposes of this chapter, the term shall include individuals designated as intern or medical fellow. [1975 1st ex.s. c 171 § 1; 1961 c 284 § 1; 1957 c 60 § 2. Prior: 1947 c 168 § 1, part; 1919 c 134 § 3, part; 1909 c 192 § 6, part; Rem. Supp. 1947 § 10008, part; prior: 1905 c 41 § 1, part; 1901 c 42 § 1, part; 1890 p 115 § 3, part; Code 1881 § 2285, part.]

*Uniform anatomical gift act: Chapter 68.08 RCW.*

**18.71.011 Definition of practice of medicine—Engaging in practice of chiropractic prohibited, when.** A person is practicing medicine if he does one or more of the following:

(1) Offers or undertakes to diagnose, cure, advise or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, by any means or instrumentality;

(2) Administers or prescribes drugs or medicinal preparations to be used by any other person;

(3) Severs or penetrates the tissues of human beings;

(4) Uses on cards, books, papers, signs or other written or printed means of giving information to the public, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human disease or conditions the designation "doctor of medicine", "physician", "surgeon", "m.d." or any combination thereof unless such designation additionally contains the description of another branch of the healing arts for which a person has a license: *Provided however*, That a person licensed under this chapter shall not engage in the practice of chiropractic as defined in RCW 18.25.005. [1975 1st ex.s. c 171 § 15.]

**18.71.015 Washington state board of medical examiners.** There is hereby created a board of medical examiners consisting of six individuals licensed to practice medicine in the state of Washington and one individual who is not a physician, to be known as the Washington state board of medical examiners.

The board shall be appointed by the governor. The members of the first board shall be appointed within thirty days after March 21, 1961, to serve the following terms: One member for one year, one member for two years, one member for three years, one member for four years, one member for five years, from the date of their appointment, or until their successors are duly appointed and qualified. On expiration of the term of any member, the governor shall appoint for a period of five years an individual of similar qualifications to take the place of such member. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been appointed and shall have qualified.

Each member of the board shall be a citizen of the United States, must be an actual resident of this state, and, if a physician, must have been licensed to practice medicine in this state for at least five years.

The board shall meet as soon as practicable after appointment and elect a chairman and a secretary from its members. Meetings shall be held at least four times a year and at such place as the board shall determine and at such other times and places as the board deems necessary.

It shall require the affirmative vote of a majority of the members of the board to carry any motion or resolution, to adopt any rule, to pass any measure, or to authorize or deny the issuance of any certificate.

Each member of the board shall receive the sum of forty dollars for each day actually attending to the work of the board or any of its committees and for the time spent in necessary travel; and in addition thereto shall be reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03-.050 and 43.03.060 as now existing or hereafter amended. Any such expenses shall be paid from funds appropriated to the department of motor vehicles.

Any member of the board may be removed by the governor for neglect of duty, misconduct or malfeasance or misfeasance in office.

Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor. [1975-'76 2nd ex.s. c 34 § 41; 1975 1st ex.s. c 171 § 2; 1961 c 284 § 2.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.71.017 Rules and regulations by board.** The board may make such rules and regulations as are not inconsistent with the laws of this state as may be determined necessary, or proper to carry out the purposes of this chapter. [1961 c 284 § 11.]

**18.71.020 Licensing required—Penalties, enforcement—Fines to state treasurer—Remittance of justice court fines, fees, penalties and forfeitures.** Any person who shall practice or attempt to practice or hold himself out as practicing medicine in this state, without having, at the time of so doing, a valid, unrevoked license as provided in this chapter, shall be guilty of a gross misdemeanor: *Provided*, That nothing in this section shall be so construed as to prohibit or penalize emergency life-saving service rendered by a physician's trained mobile intensive care paramedic, as defined in RCW 18.71.200, if such emergency life-saving service be rendered under the responsible supervision and control of a licensed physician. In each such conviction the fine shall be paid, when collected, to the state treasurer: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. The director is authorized to prosecute all persons guilty of a violation of the provisions of this chapter. [1975 1st ex.s. c 171 § 3; 1971 ex.s. c 305 § 1; 1969 ex.s. c 199 § 18; 1961 c 284 § 3; 1919 c 134 § 8; 1909 c 192 § 14; RRS § 10018. Prior: 1890 p 119 § 8; Code 1881 § 2290.]

**Persons licensed under prior laws:** "Any person who holds a license from the board of medical examiners heretofore existing, under the provisions of any laws of this state, past or present, shall be entitled to practice medicine and surgery in this state the same as if issued under this act: *Provided, however*, That all licenses herein mentioned may be revoked for unprofessional conduct, in the same manner and upon the same grounds as if issued under this act." [1909 c 192 § 17.]

**18.71.025 Injunction to prevent practice until license secured.** The attorney general, each prosecuting attorney, the director, the state board of medical examiners, or any citizen of the state may in accordance with the laws of this state governing injunctions, maintain an action in the name of this state to enjoin such person from engaging in the practice of medicine as herein defined until a valid license to practice medicine be secured: *Provided*, That such injunction shall not relieve such person so practicing medicine without a valid license from criminal prosecution therefor, but such remedy by injunction shall be in addition to the liability of such offender to criminal prosecution. [1975 1st ex.s. c 171 § 4; 1961 c 284 § 10.]

**18.71.030 Exemptions.** Nothing in this chapter shall be construed to apply to or interfere in any way with the

practice of religion or any kind of treatment by prayer; nor shall anything in this chapter be construed to prohibit:

(1) The furnishing of medical assistance in cases of emergency requiring immediate attention;

(2) The domestic administration of family remedies;

(3) The practice of dentistry, osteopathy, osteopathy and surgery, nursing, chiropractic, podiatry, optometry, drugless therapeutics or any other healing art licensed under the methods or means permitted by such license;

(4) The practice of medicine in this state by any commissioned medical officer serving in the armed forces of the United States or public health service or any medical officer on duty with the United States veterans administration while such medical officer is engaged in the performance of the duties prescribed for him by the laws and regulations of the United States;

(5) The practice of medicine by any practitioner licensed by another state or territory in which he resides, provided that such practitioner shall not open an office or appoint a place of meeting patients or receiving calls within this state;

(6) The practice of medicine by a person who is a regular student in a school of medicine approved and accredited by the board: *Provided, however,* That the performance of such services be only pursuant to a regular course of instruction or assignments from his instructor, or that such services are performed only under the supervision and control of a person licensed pursuant to this chapter;

(7) The practice of medicine by a person serving a period of postgraduate medical training in a program of clinical medical training sponsored by a college or university in this state or by a hospital accredited in this state: *Provided,* That the performance of such services shall be only pursuant to his duties as a trainee;

(8) The practice of medicine by a person who is regularly enrolled in a physician's assistant program approved by the board: *Provided, however,* That the performance of such services be only pursuant to a regular course of instruction in said program: *And provided further,* That such services are performed only under the supervision and control of a person licensed pursuant to this chapter;

(9) The practice of medicine by a registered physician's assistant which practice is performed under the supervision and control of a physician licensed pursuant to this chapter;

(10) The practice of medicine, in any part of this state which shares a common border with Canada and which is surrounded on three sides by water, by a physician licensed to practice medicine and surgery in Canada or any province or territory thereof. [1975 1st ex.s. c 171 § 5; 1973 1st ex.s. c 110 § 1; 1961 c 284 § 4; 1919 c 134 § 12; 1909 c 192 § 19; RRS § 10024.]

*Administering drugs, inoculations, etc., by registered nurses permitted: RCW 18.88.290.*

**18.71.040 Application fee (as amended by 1975 1st ex.s. c 30).** Every applicant for a certificate to practice medicine and surgery shall pay a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. [1975 1st ex.s. c 30 § 61; 1955 c 202 § 35.

Prior: 1941 c 166 § 1, part; 1913 c 82 § 1, part; 1909 c 192 § 7, part; Rem. Supp. 1941 § 10010-1, part.]

**18.71.040 Application, examination fees (as amended by 1975 1st ex.s. c 171).** Every applicant for a license to practice medicine shall pay an application fee of twenty-five dollars. In addition to the application fee provided for herein, every applicant for licensure by examination shall pay an examination fee of one hundred dollars, which sum shall be refunded in the event the board determines that the applicant is not eligible for examination. In addition to the application fee provided for herein, every applicant for licensure by reciprocity or waiver of examination shall pay a fee of fifty dollars. The director shall charge a fee of fifteen dollars for license certifications. [1975 1st ex.s. c 171 § 6; 1955 c 202 § 35. Prior: 1941 c 166 § 1, part; 1913 c 82 § 1, part; 1909 c 192 § 7, part; Rem. Supp. 1941 § 10010-1, part.]

**Reviser's note:** RCW 18.71.040 was amended twice during the 1975 first extraordinary session of the legislature, each without reference to the other.

For rule of construction concerning sections amended more than once at the same session, see RCW 1.12.025.

*Basic sciences examination fee: RCW 43.74.040.*

**18.71.050 Application—Eligibility requirements—United States and Canadian graduates.** Each applicant who has graduated from a school of medicine located in any state, territory or possession of the United States, the District of Columbia, or the Dominion of Canada, shall file an application for licensure with the board on a form prepared by the director with the approval of the board. Each applicant shall furnish proof satisfactory to the board of the following:

(1) That he has attended and graduated from a school of medicine approved by the board;

(2) That he has completed one year of postgraduate medical training in a program acceptable to the board;

(3) That he is of good moral character;

(4) That he is physically and mentally capable of safely carrying on the practice of medicine. The board may require any applicant to submit to such examination or examinations as it deems necessary to determine an applicant's physical and/or mental capability to safely practice medicine;

(5) That his license to practice medicine is not at the time of the application revoked or suspended by any licensing agency and that he has not been guilty of any conduct which would constitute grounds for refusal, revocation or suspension of such license under the laws of the state of Washington.

Nothing in this section shall be construed as prohibiting the board from requiring such additional information from applicants as it deems necessary. [1975 1st ex.s. c 171 § 7; 1961 c 284 § 5; 1957 c 60 § 3. Prior: 1947 c 168 § 1, part; 1919 c 134 § 3, part; 1909 c 192 § 6, part; Rem. Supp. 1947 § 10008, part; prior: 1905 c 41 § 1, part; 1901 c 42 § 1, part; 1890 p 115 § 3, part; Code 1881 § 2285, part.]

**18.71.051 Application—Eligibility requirements—Foreign graduates.** Applicants for licensure to practice medicine who have graduated from a school of medicine located outside of the states, territories and possessions of the United States, the District of Columbia, or the Dominion of Canada, shall file an application for licensure with the board on a form prepared by the director with the approval of the board.

Each applicant shall furnish proof satisfactory to the board of the following:

(1) That he has completed in a school of medicine a resident course of professional instruction equivalent to that required in this chapter for applicants generally;

(2) That he meets all the requirements which must be met by graduates of the United States and Canadian school of medicine except that he need not have graduated from a school of medicine approved by the board;

(3) That he has satisfactorily passed the examination given by the educational council for foreign medical graduates or has met the requirements in lieu thereof as set forth in rules and regulations adopted by the board;

(4) That he has the ability to read, write, speak, understand, and be understood in the English language. [1975 1st ex.s. c 171 § 16.]

**18.71.055 Schools of medicine—Requirements for approval.** The board may approve any school of medicine which is located in any state, territory or possession of the United States, the District of Columbia, or in the Dominion of Canada, provided that it:

(1) Requires collegiate instruction which includes courses deemed by the board to be prerequisites to medical education;

(2) Provides adequate instruction in the following subjects: Anatomy, biochemistry, microbiology and immunology, pathology, pharmacology, physiology, anaesthesiology, dermatology, gynecology, internal medicine, neurology, obstetrics, ophthalmology, orthopedic surgery, otolaryngology, pediatrics, physical medicine and rehabilitation, preventive medicine and public health, psychiatry, radiology, surgery and urology and such other subjects determined by the board;

(3) Provides clinical instruction in hospital wards and out-patient clinics under guidance.

Approval may be withdrawn by the board at any time a medical school ceases to comply with one or more of the requirements of this section.

(4) Nothing in this section shall be construed to authorize the board to approve a school of osteopathy, osteopathy and surgery or osteopathic medicine, for purposes of qualifying an applicant to be licensed under this chapter by direct licensure, reciprocity or otherwise. [1975 1st ex.s. c 171 § 8; 1961 c 284 § 6; 1957 c 60 § 4.]

**18.71.060 Record of proceedings of board and of applications.** Said board shall keep an official record of all its proceedings, a part of which record shall consist of a register of all applicants for licensure under this chapter, with the result of each application. Said record shall be evidence of all the proceedings of said board which are set forth therein. [1975 1st ex.s. c 171 § 9; 1961 c 284 § 7; 1909 c 192 § 8; RRS § 10011.]

**18.71.070 Examination—Record.** With the exception of those applicants granted licensure through the provisions of RCW 18.71.090 or 18.71.095, applicants for licensure must successfully complete an examination administered by the board to determine their professional qualifications. The board shall prepare and

give, or approve the preparation and giving of, an examination which shall cover those general subjects and topics, a knowledge of which is commonly and generally required of candidates for the degree of doctor of medicine conferred by approved colleges or schools of medicine in the United States. Notwithstanding any other provision of law, the board shall have the sole responsibility for determining the proficiency of applicants under this chapter, and, in so doing, may waive any prerequisite to licensure not set forth in this chapter.

The board may by rule establish the passing grade for the examination, and in so doing may grant credit based on experience. In no event, however, shall credit for experience exceed five percent of the total possible grade.

Examination results shall be part of the records of the board and shall be permanently kept with the applicant's file. [1975 1st ex.s. c 171 § 10; 1961 c 284 § 8; 1919 c 134 § 4; 1909 c 192 § 6; RRS § 10009.]

**18.71.075 Waiver of examination in basic sciences.** The board may waive the examination in basic sciences required under chapter 43.74 RCW for any person applying for a license to practice medicine and surgery if, in the sole discretion of the board, the applicant has successfully passed an examination that is of equal or greater difficulty than the examination being waived. [1971 ex.s. c 227 § 4.]

*Effect of waiver: RCW 43.74.037.*

**18.71.080 License—Annual renewal (as amended by 1975 1st ex.s. c 30).** Every person licensed to practice medicine and surgery in this state shall register with the director of department of motor vehicles annually, and pay an annual renewal registration fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, on or before the first day of July of each year, and thereupon the license of such person shall be renewed for a period of one year. Any failure to register and pay the annual renewal registration fee shall render the license invalid, but such license shall be reinstated upon written application therefor to the director, and payment to the state of a penalty fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, together with all delinquent annual license renewal fees. [1975 1st ex.s. c 30 § 62; 1971 ex.s. c 266 § 12; 1955 c 202 § 36. Prior: 1941 c 166 § 1, part; 1913 c 82 § 1, part; 1909 c 192 § 7, part; Rem. Supp. 1941 § 10010-1, part.]

**18.71.080 License—Annual renewal—Continuing education requirement—Failure to renew, procedure (as amended by 1975 1st ex.s. c 171).** Every person licensed to practice medicine in this state shall register with the director of department of motor vehicles annually, and pay an annual renewal registration fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, on or before the first day of July of each year. The board may establish rules and regulations governing mandatory continuing education requirements which shall be met by physicians applying for renewal of licenses. Any failure to register and pay the annual renewal registration fee shall render the license invalid, but such license shall be reinstated upon written application therefor to the director, and payment to the state of a penalty of ten dollars, together with all delinquent annual license renewal fees: *Provided, however,* That any person who fails to renew his license for a period of three years, shall in no event be entitled to renew his license under this section. Such a person in order to obtain a license to practice medicine in this state, shall file an original application as provided for in this chapter, along with the requisite fee therefor. The board, in its sole discretion, may permit such applicant to be licensed without examination if it is satisfied that such applicant meets all the requirements for licensure in this state, and is competent to engage in the practice of medicine. [1975 1st ex.s. c 171 § 11; 1971 ex.s. c 266 § 12; 1955 c 202 § 36. Prior: 1941 c 166 § 1,

part; 1913 c 82 § 1, part; 1909 c 192 § 7, part; Rem. Supp. 1941 § 10010-1, part.]

**Reviser's note:** RCW 18.71.080 was amended twice in the 1975 first extraordinary session of the legislature, each without reference to the other.

For rule of construction concerning sections amended more than once at the same session, see RCW 1.12.025.

**18.71.090 License without examination—Reciprocity—National board examinees—Fee (as amended by 1975 1st ex.s. c 30).** Any applicant who has been examined and licensed under the laws of another state, which through a reciprocity provision in its laws, similarly accredits the holders of certificates from the proper authorities of this state to the full privileges of practice within its borders or an applicant who has satisfactorily passed examinations given by the national board of medical examiners may, in the discretion of the board, be granted a license without examination on the payment of a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended to the state treasurer: *Provided*, That he has not previously failed to pass an examination held in this state. He must file with the board a copy of his license certified by the proper authorities of the issuing state to be a full, true copy thereof, and must show that the standards, eligibility requirements, and examinations of that state are at least equal in all respects to those of this state. [1975 1st ex.s. c 30 § 63; 1961 c 284 § 9; 1957 c 60 § 5; 1919 c 134 § 11; RRS § 10023.]

**18.71.090 License without examination—Reciprocity—National board examinees—Fee (as amended by 1975 1st ex.s. c 171).** Any applicant who meets the requirements of RCW 18.71.050 and has been licensed under the laws of another state, territory, or possession of the United States, or of any province of Canada, or an applicant who has satisfactorily passed examinations given by the national board of medical examiners may, in the discretion of the board, be granted a license without examination on the payment of the fees required by this chapter: *Provided*, That he must file with the board a copy of his license certified by the proper authorities of the issuing state to be a full, true copy thereof, and must show that the standards, eligibility requirements and examinations of that state are at least equal in all respects to those of this state. [1975 1st ex.s. c 171 § 12; 1961 c 284 § 9; 1957 c 60 § 5; 1919 c 134 § 11; RRS § 10023.]

**Reviser's note:** RCW 18.71.090 was amended twice during the 1975 first extraordinary session of the legislature, each without reference to the other.

For rule of construction concerning sections amended more than once at the same session, see RCW 1.12.025.

**18.71.095 Limited licenses.** The board may, without examination, issue a limited license to persons who possess the qualifications set forth herein:

(1) The board may, upon the written request of the secretary of the department of social and health services, issue a limited license to practice medicine in this state to persons who have been accepted for employment by the department as physicians; who are licensed to practice medicine in another state of the United States or in the country of Canada or any province or territory thereof; and who meet all of the qualifications for licensure set forth in RCW 18.71.050.

Such license shall permit the holder thereof to practice medicine only in connection with patients, residents, or inmates of the state institutions under the control and supervision of the secretary of the department of social and health services.

(2) The board may issue a limited license to practice medicine in this state to persons who have been accepted for employment by a county or city health department as physicians; who are licensed to practice medicine in another state of the United States or in the country of Canada or any province or territory thereof; and who

meet all of the qualifications for licensure set forth in RCW 18.71.050.

Such license shall permit the holder thereof to practice medicine only in connection with his or her duties in employment with the city or county health department.

(3) Upon receipt of a completed application showing that the applicant meets all of the requirements for licensure set forth in RCW 18.71.050 except for completion of one year of postgraduate medical training, and that the applicant has been appointed as a resident physician in a program of postgraduate clinical training in this state approved by the board, the board may issue a limited license to a resident physician. Such license shall permit the resident physician to practice medicine only in connection with his duties as a resident physician and shall not authorize him to engage in any other form of practice. Each resident physician shall practice medicine only under the supervision and control of a physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physician at the place where services are rendered.

All persons licensed under this section shall be subject to the jurisdiction of the medical disciplinary board to the same extent as other members of the medical profession, in accordance with chapter 18.72 RCW and in addition, the limited license to practice medicine in the state of Washington may be revoked by the medical disciplinary board after a hearing has been held in accordance with the provisions set forth in chapter 18.72 RCW, and determination made by the medical disciplinary board that such licensee has violated the limitations set forth herein.

Persons applying for licensure pursuant to this section shall pay an application fee of twenty-five dollars and, in the event the license applied for is issued, a license fee at the rate provided for renewals of licenses generally. Licenses issued hereunder may be renewed annually pursuant to the provisions of RCW 18.71.080: *Provided*, That a limited license for a resident physician may not be renewed until such resident physician has successfully completed either all parts of the examination given by the national board of medical examiners or an equivalent examination approved by the board. Interim approval may be granted until the result of such examination becomes available. Any person who obtains a limited license pursuant to this section may, without an additional application fee, apply for licensure under this chapter. [1975 1st ex.s. c 171 § 13; 1973 1st ex.s. c 4 § 1; 1967 c 138 § 1; 1965 c 29 § 1; 1959 c 189 § 1.]

**18.71.100 Applicability of health regulations.** All persons granted licenses or certificates under this chapter, shall be subject to the state and municipal regulations relating to the control of contagious diseases, the reporting and certifying to births and deaths, and all matters pertaining to public health; and all such reports shall be accepted as legal. [1909 c 192 § 18; RRS § 10022.]

*Public health and safety: Title 70 RCW.*

*Vital statistics: Chapter 70.58 RCW.*



**18.71.120 Refusal of license for unprofessional conduct—Reinstatement procedure.** The board must refuse a certificate to any applicant guilty of unprofessional conduct: *Provided*, That any person whose license has been suspended or revoked under the provisions of chapter 18.72 RCW may apply to the medical disciplinary board for reinstatement at any time and the medical disciplinary board may hold hearings on any such petition and may order reinstatement and impose terms and conditions thereof and issue a certificate of reinstatement. [1961 c 284 § 12; 1955 c 202 § 38. Prior: 1919 c 134 § 7, part; 1909 c 192 § 11, part; 1905 c 41 § 1, part; RRS § 10014, part.]

*"Unprofessional conduct": RCW 18.72.030.*

**18.71.140 Refusal of license for unprofessional conduct—Hearing required.** Before refusal of a license upon the ground of unprofessional conduct a hearing must be had before the medical disciplinary board. Such hearing shall be governed by the procedure set forth in chapter 18.72 RCW and the applicant shall have all the rights accorded to an accused license holder under such chapter, including the right to appeal from an adverse decision. [1955 c 202 § 40. Prior: 1919 c 134 § 7, part; 1909 c 192 § 11, part; 1905 c 41 § 1, part; RRS § 10014, part.]

*"Unprofessional conduct": RCW 18.72.030.*

**18.71.145 Denial of license application or renewal—Notification—Right to hearing.** If the board determines to deny an application for licensure, or renewal, it shall forthwith notify the applicant by mailing to him at the address listed on his application a concise statement of the reasons for such denial. Such an applicant may request a hearing within thirty days of the date such notification is mailed and such request shall be granted if it appears that the board, under any circumstances which might be shown at such a hearing, has the power to reverse its decision. All such hearings shall be held in accordance with the administrative procedure act (chapter 34.04 RCW). [1975 1st ex.s. c 171 § 17.]

**18.71.151 Physician members of committees to evaluate credentials and qualifications of physicians—Immunity from civil suit.** See RCW 4.24.240.

**18.71.161 Physicians filing charges or presenting evidence before committees, boards or hospitals—Immunity from civil suit.** See RCW 4.24.250, 4.24.260.

**18.71.165 Board of medical examiners—Immunity from suit.** Members of the board shall be immune from suit in any other action, civil or criminal, based upon licensure proceedings or other official acts performed in good faith as members of the board. [1975 1st ex.s. c 171 § 18.]

**18.71.171 Records of medical society or hospital committee or board not subject to civil process.** See RCW 4.24.250.

**18.71.180 Denial of license—Statement of grounds—Record.** In case of the denial of a license, the board shall file a brief and concise statement of the grounds and reasons therefor in the office of the director of the department of motor vehicles, which shall remain of record therein. [1975 1st ex.s. c 171 § 14; 1955 c 202 § 44. Prior: (i) 1919 c 134 § 7, part; RRS § 10014, part. (ii) 1909 c 192 § 12; RRS § 10016.]

**18.71.190 False personation—Penalty.** Every person filing for record, or attempting to file for record, the certificate issued to another, falsely claiming himself to be the person named in such certificate, or falsely claiming himself to be the person entitled to the same, shall be guilty of a felony, and, upon conviction thereof, shall be subject to such penalties as are provided by the laws of this state for the crime of forgery. [1909 c 192 § 16; RRS § 10019.]

*False personation: RCW 9A.60.040.*

**18.71.195 Suspension of physician's license for mental incompetency or illness, physical condition—Hearing—Examination—Reinstatement—Grounds.** See RCW 18.72.275.

**18.71.200 "Physician's trained mobile intensive care paramedic"—Defined.** As used in RCW 18.71.020, "physician's trained mobile intensive care paramedic" means a person who:

(1) has successfully completed an advanced first aid course equivalent to the advanced industrial first aid course prescribed by the division of industrial safety and health, department of labor and industries; and

(2) is trained by a licensed physician:

(a) to carry out all phases of cardio-pulmonary resuscitation;

(b) to administer drugs under written or oral authorization of a licensed physician; and

(c) to administer intravenous solutions under written or oral authorization of a licensed physician; and

(3) has been examined and certified as a physician's trained mobile intensive care paramedic by a county health officer or by the University of Washington's school of medicine or by their designated representatives. [1973 1st ex.s. c 52 § 1; 1971 ex.s. c 305 § 2.]

**18.71.210 Physician's trained mobile intensive care paramedic—Liability for acts or omissions.** No act or omission of any physician's trained mobile intensive care paramedic, as defined in RCW 18.71.200 done or omitted in good faith while rendering emergency lifesaving service under the responsible supervision and control of a licensed physician to a person who is in immediate danger of loss of life shall impose any liability upon the trained mobile intensive care paramedic, the supervising physician, any hospital, the officers, members of the staff, nurses, or other employees of a hospital or upon a federal, state, county, city or other local governmental unit or upon other employees of such a governmental unit: *Provided*, That this section shall not relieve a physician or a hospital of any duty otherwise imposed by law upon such physician or hospital for the designation



or training of a physician's trained mobile intensive care paramedic or for the provision or maintenance of equipment to be used by the physician's trained mobile intensive care paramedics. [1971 ex.s. c 305 § 3.]

**18.71.220 Rendering emergency care—Immunity of physician or hospital from civil liability.** No physician or hospital licensed in this state shall be subject to civil liability, based solely upon failure to obtain consent in rendering emergency medical, surgical, hospital, or health services to any individual regardless of age where its patient is unable to give his consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care: *Provided*, That such physician or hospital has acted in good faith and without knowledge of facts negating consent. [1971 ex.s. c 305 § 4.]

*Persons rendering emergency care, immunity from liability: RCW 4.24.300.*

**18.71.230 Revocation of right of Canadian physician to practice—Grounds—Procedure.** A right to practice medicine and surgery by a Canadian physician in this state pursuant to RCW 18.71.030 shall be revocable by order of the director of the department of motor vehicles upon a finding by the director of an act of unprofessional conduct as defined in RCW 18.72.030. Such physician shall have the same rights of notice, hearing and judicial review as provided licensed physicians generally pursuant to chapter 18.72 RCW. [1973 1st ex.s. c 110 § 2.]

**18.71.910 Repeal—1909 c 192.** All acts, or parts of acts, in any wise conflicting with the provisions of this act, are hereby repealed. [1909 c 192 § 22.]

**18.71.920 Repeal—1957 c 60.** All acts and parts of acts to the extent that the same are in conflict herewith are hereby repealed. [1957 c 60 § 6.]

**18.71.930 Severability—1957 c 60.** If any section, sentence, clause, or phrase of this act should be held to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this act. [1957 c 60 § 7.]

**18.71.940 Severability—1961 c 284.** If any section, sentence, clause, or phrase of this act should be held to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this act. [1961 c 284 § 13.]

**18.71.941 Severability—1975 1st ex.s. c 171.** If any section, sentence, clause, or phrase of this 1975 amendatory act should be held to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this 1975 amendatory act. [1975 1st ex.s. c 171 § 19.]

## Chapter 18.71A PHYSICIANS' ASSISTANTS

### Sections

- 18.71A.010 Definitions.
- 18.71A.020 Board to adopt rules and regulations fixing qualifications and restricting practice—Contents.
- 18.71A.030 Limitations on practice by physicians' assistants.
- 18.71A.040 Physician's application for physician's assistant—Fee—Approval or rejection by board—Hearing.
- 18.71A.050 Physician's liability, responsibility.
- 18.71A.060 Limitations on health care services.
- 18.71A.070 Medical practice investigator—Appointment—Powers and duties.

**18.71A.010 Definitions.** (1) "Physician's assistant" means:

(a) A person who is enrolled in, or who has satisfactorily completed, a board approved training program designed to prepare persons to practice medicine to a limited extent; or

(b) A person who is a university medical graduate of a foreign medical school or college.

(2) "Board" means the board of medical examiners.

(3) "Practice medicine" shall have the meaning defined in \*RCW 18.71.010. [1975 1st ex.s. c 190 § 1; 1971 ex.s. c 30 § 1.]

**\*Reviser's note:** For definition of "practice medicine" see RCW 18.71.011.

**Severability—1971 ex.s. c 30:** "If any provision of this 1971 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 30 § 13.] This applies to this chapter and to chapter 18.57A RCW.

**18.71A.020 Board to adopt rules and regulations fixing qualifications and restricting practice—Contents.** The board shall adopt rules and regulations fixing the qualifications and the educational and training requirements for persons who may be employed as physician's assistants or who may be enrolled in any physician's assistant training program.

The board shall, in addition, adopt rules and regulations governing the extent to which physician's assistants may practice medicine during training and after successful completion of a training course. Such regulations shall provide:

(1) That the practice of a physician's assistant shall be limited to the performance of those services for which he is trained; and

(2) That each physician's assistant shall practice medicine only under the supervision and control of a physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physician at the place where services are rendered. [1971 ex.s. c 30 § 2.]

**18.71A.030 Limitations on practice by physicians' assistants.** A physician's assistant as defined in this chapter may practice medicine in this state only after authorization by the board and only to the extent permitted by the board. A physician's assistant shall be subject to discipline under chapter 18.72 RCW. [1971 ex.s. c 30 § 3.]

**18.71A.040 Physician's application for physician's assistant—Fee—Approval or rejection by board—Hearing.** No physician practicing in this state shall utilize the services of a physician's assistant without the approval of the board.

Any physician licensed in this state may apply to the board for permission to use the services of a physician's assistant. The application shall be accompanied by a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, shall detail the manner and extent to which the physician's assistant would be used and supervised, shall detail the education, training, and experience of the physician's assistant and shall provide such other information in such form as the board may require.

The board may approve or reject such applications. In addition, the board may modify the proposed utilization of the physician's assistant, and approve the application as modified. No such approval shall extend for more than one year, but approval once granted may be renewed annually upon payment of a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. Whenever it appears to the board that a physician's assistant is being utilized in a manner inconsistent with the approval granted, the board may withdraw such approval. In the event a hearing is requested upon the rejection of an application, or upon the withdrawal of an approval, a hearing shall be conducted in accordance with RCW 18.71.140. [1975 1st ex.s. c 30 § 64; 1975 1st ex.s. c 190 § 2; 1971 ex.s. c 30 § 4.]

**18.71A.050 Physician's liability, responsibility.** No physician who uses the services of a physician's assistant in accordance with and within the terms of any permission granted by the medical examining board shall be considered as aiding and abetting an unlicensed person to practice medicine within the meaning of RCW 18.71.020 or 18.72.030(13): *Provided, however,* That any physician shall retain professional and personal responsibility for any act which constitutes the practice of medicine as defined in RCW 18.71.010 when performed by a physician's assistant in his employ. [1971 ex.s. c 30 § 5.]

**18.71A.060 Limitations on health care services.** No health care services may be performed under this chapter in any of the following areas:

(1) The measurement of the powers or range of human vision, or the determination of the accommodation and refractive state of the human eye or the scope of its functions in general, or the fitting or adaptation of lenses or frames for the aid thereof.

(2) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training or orthoptics.

(3) The prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the human eye.

(4) Nothing in this section shall preclude the performance of routine visual screening.

(5) The practice of dentistry or dental hygiene as defined in chapters 18.32 and 18.29 RCW respectively.

The exemptions set forth in RCW 18.32.030, paragraphs (1) and (8), shall not apply to a physician's assistant.

(6) The practice of chiropractic as defined in chapter 18.25 RCW including the adjustment or manipulation of the articulations of the spine.

(7) The practice of podiatry as defined in chapter 18.22 RCW. [1973 c 77 § 21; 1971 ex.s. c 30 § 6.]

**18.71A.070 Medical practice investigator—Appointment—Powers and duties.** There shall be appointed by the director of the department of motor vehicles an agent whose title shall be "medical practice investigator", who shall have the duty and shall be authorized to enter the clinic, office, or premises where a physician's assistant is employed for the purpose of inspecting the registration and utilization of any physician's assistant employed therein. Said investigator may serve and execute any notice or process issued under the authority of this chapter and shall perform any other duty prescribed by the director or the board, including assisting other agencies in enforcing the provisions of the law regulating the practice of medicine: *Provided,* That funds must be included in the department's 1975-77 operational budget for this program. [1975 1st ex.s. c 190 § 3.]

## Chapter 18.72 MEDICAL DISCIPLINARY BOARD

### Sections

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*Examining committee in basic sciences: Chapter 43.74 RCW.*

*Physicians: Chapter 18.71 RCW.*

**18.72.010 Declaration of purpose.** This chapter is passed:

(1) In the exercise of the police power of the state to protect public health, to promote the welfare of the state, and to provide an adequate public agency to act as a disciplinary body for the members of the medical profession licensed to practice medicine and surgery in this state;

(2) Because the health and well-being of the people of this state are of paramount importance;

(3) Because the conduct of members of the medical profession licensed to practice medicine and surgery in this state plays a vital role in preserving the health and well-being of the people of the state; and

(4) Because the agency which now exists to handle disciplinary proceedings for members of the medical profession licensed to practice medicine and surgery in this state is ineffective and very infrequently employed, and consequently there is no effective means of handling such disciplinary proceedings when they are necessary for the protection of the public health. [1955 c 202 § 1.]

**18.72.020 Definitions.** Terms used in this chapter and in RCW 18.71.040, 18.71.080, 18.71.120, 18.71.140 and 18.71.180 shall have the meaning set forth in this section unless the context clearly indicates otherwise:

(1) "Board" means the medical disciplinary board.

(2) "License" means a certificate or license to practice medicine and surgery in this state as provided for in RCW 18.71.010 and 18.71.050.

(3) "Members" means members of the medical disciplinary board.

(4) "Secretary" means the secretary of the medical disciplinary board. [1955 c 202 § 2.]

**18.72.030 "Unprofessional conduct" defined.** The term "unprofessional conduct" as used in this chapter and RCW 18.71.120 and 18.71.140 shall mean the following items or any one or combination thereof:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption, whether the same be committed in the course of his or her relations as a physician, or otherwise, and whether the same constitutes a crime or not; and if the act constitutes a crime, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action. Upon such conviction, however, the judgment and sentence shall be conclusive evidence at the ensuing disciplinary hearing of the guilt of the respondent physician of the crime

described in the indictment or information, and of his or her violation of the statute upon which it is based;

(2) The procuring, or aiding or abetting in procuring a criminal abortion;

(3) Misrepresentation or concealment of a material fact in the obtaining of a license to practice medicine or in reinstatement thereof;

(4) All advertising of medical business which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons and so be harmful or injurious to public morals or safety;

(5) The impersonation of another licensed practitioner;

(6) Habitual intemperance;

(7) The possession, use, prescription for use, or distribution of controlled substances or legend drugs in any way other than for therapeutic purposes;

(8) The offering, undertaking, or agreeing to cure or treat disease by a secret method, procedure, treatment, or medicine, or the treating, operating, or prescribing for any human condition by a method, means, or procedure which the licensee refuses to divulge upon demand of the board;

(9) Unprofessional conduct as defined in chapter 19.68 RCW;

(10) Aiding or abetting an unlicensed person to practice medicine;

(11) Suspension or revocation of the physician's license to practice medicine by competent authority in any state, federal, or foreign jurisdiction;

(12) Gross incompetency in the practice of medicine and surgery;

(13) Violation of any board rule or regulation fixing a standard of professional conduct;

(14) Wilful violation of RCW 18.72.175 or wilful disregard of the subpoena or notice of the Washington state medical disciplinary board; or

(15) Gross, wilful, and continued overcharging for professional services. [1975 c 61 § 1; 1963 c 142 § 1; 1955 c 202 § 3.]

*Abortion: Chapter 9.02 RCW.*

*Failure of accused physician to cooperate deemed unprofessional conduct: RCW 18.72.175.*

*False advertising: Chapter 9.04 RCW.*

*Narcotics: Chapter 69.32 RCW.*

*Uniform alcoholism and intoxication treatment act: Chapter 70.96A RCW.*

**18.72.040 Board created—Composition—Legal advisor.** There is hereby created the "Washington state medical disciplinary board," which shall be composed of one holder of a valid license to practice medicine and surgery from each congressional district now existing or hereafter created in the state. The board shall be an administrative agency of the state of Washington. The attorney general shall be the advisor of the board and shall represent it in all legal proceedings. [1955 c 202 § 4.]

**18.72.050 Election of members.** Members of the board shall be elected by secret mail ballot by the holders of licenses to practice medicine and surgery residing

in each congressional district and shall hold office until their successors are elected and qualified. Members from even-numbered congressional districts shall be elected in even-numbered years and members from odd-numbered congressional districts shall be elected in odd-numbered years. [1955 c 202 § 5.]

**18.72.060 Nominations.** Nominations to the board may be made by petition signed by not less than twenty-five license holders residing in the nominee's district, and shall be submitted to the board at least four weeks prior to the date of the election. Votes cast for license holders not so nominated shall be valid. [1955 c 202 § 6.]

**18.72.070 Date of election—Commencement of term.** The election shall be held in September and shall be conducted in accordance with rules and regulations adopted by the board under the rule-making power hereinafter provided for. Terms of office of members shall commence on October 1st. [1955 c 202 § 7.]

**18.72.080 Vacancies.** Vacancies in the board shall be filled by the governor and a member appointed to fill a vacancy on the board shall serve until the naming of his successor in the next district election and until his successor takes office on the October 1st following the election. [1955 c 202 § 8.]

**18.72.090 Removal of members.** Any member of the board may be removed by the governor for neglect of duty, misconduct or malfeasance or misfeasance in office, after being given a written statement of the charges against him and sufficient opportunity to be heard thereon. [1955 c 202 § 9.]

**18.72.100 Compensation and reimbursement of members.** Members of the board shall be paid twenty-five dollars for each day spent in performing their duties as members of the board and shall be repaid their travel expenses while engaged in business of the board in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Such compensation and reimbursement for expenses shall be paid out of the general fund on vouchers approved by the \*director of licenses. [1975-'76 2nd ex.s. c 34 § 42; 1955 c 202 § 10.]

**\*Reviser's note:** The powers and duties of the "director of licenses" have devolved to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest.

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.72.110 Territorial scope of operations.** The board may meet, function, and exercise its powers at any place within the state. [1955 c 202 § 11.]

**18.72.120 Organization of first board.** The first board shall be organized in this manner: Within ten days after the effective date of this chapter the director of licenses shall appoint five holders of licenses to practice medicine and surgery in this state to serve as members of a temporary commission which shall, within ninety

days thereafter, organize and hold the election to name the first members of the medical disciplinary board. The temporary commission shall adopt such rules and regulations as it deems necessary to govern the holding of the first election. After the election is completed and the first members of the board have qualified and taken office, the temporary commission shall be abolished and all of its records shall be turned over to the board. [1955 c 202 § 12.]

**18.72.130 Officers—Meetings—Quorum.** The board shall elect from its members a chairman, vice-chairman, and secretary, who shall serve for one year and until their successors are elected and qualified. The board shall meet at least once a year or oftener upon the call of the chairman at such times and places as the chairman shall designate. Five members shall constitute a quorum to transact business. [1955 c 202 § 13.]

**18.72.140 Immunity from suit.** Members of the board shall be immune from suit in any action, civil or criminal, based upon any disciplinary proceedings or other official acts performed in good faith as members of such board. [1955 c 202 § 14.]

**18.72.150 Powers and duties.** The board shall have the following powers and duties:

- (1) To adopt, amend and rescind such rules and regulations as it deems necessary to carry out the provisions of this chapter;
- (2) To investigate all complaints and charges of unprofessional conduct against any holder of a license and to hold hearings to determine whether such charges are substantiated or unsubstantiated;
- (3) To employ necessary stenographic or clerical help;
- (4) To issue subpoenas and administer oaths in connection with any investigation, hearing, or disciplinary proceeding held under this chapter;
- (5) To take or cause depositions to be taken as needed in any investigation, hearing, or proceeding;
- (6) To investigate complaints and charges of malpractice and unsafe conditions and practices, to analyze equipment, procedures, and training, in such cases, and to direct corrective action. [1975 c 61 § 4; 1955 c 202 § 15.]

**18.72.160 Complaints—Hearing committee.** Any person, firm, corporation, or public officer may submit a written complaint to the secretary charging the holder of a license to practice medicine and surgery with unprofessional conduct, specifying the grounds therefor. If the board determines that such complaint merits consideration, or if the board shall have reason to believe, without a formal complaint, that any holder of a license has been guilty of unprofessional conduct, the chairman shall designate three members to serve as a committee to hear and report upon such charges. [1955 c 202 § 16.]

**18.72.170 Specification of charges.** When a hearing committee is named, the secretary shall prepare a specification of the charge or charges of unprofessional conduct made against a license holder, a copy of which shall

be served upon the accused, together with a notice of the hearing, as provided in RCW 18.72.180. [1955 c 202 § 17.]

**18.72.175 Accused to cooperate with board—**  
**Failure deemed unprofessional conduct.** It shall be the duty and obligation of a physician against whom a complaint is made and who is being investigated by the medical disciplinary board to cooperate with the board as requested by it by:

- (1) Furnishing any papers or documents;
- (2) Furnishing in writing a full and complete explanation covering the matter contained in such complaint;
- (3) Appearing before the board at the time and place designated.

Should such physician fail to cooperate with the board in the manner herein provided, such conduct shall be deemed to be unprofessional conduct. [1975 c 61 § 2.]

**18.72.180 Time, notice, of hearing.** The time of hearing shall be fixed by the secretary as soon as convenient, but not earlier than thirty days after service of the charges upon the accused. The secretary shall issue a notice of hearing of the charges, which notice shall specify the time and place of hearing and shall notify the accused that he may file with the secretary a written response within twenty days of the date of service. Such notice shall also notify the accused that a stenographic record of the proceeding will be kept, that he will have the opportunity to appear personally and to have counsel present, with the right to produce witnesses and evidence in his own behalf, to cross-examine witnesses testifying against him, to examine witnesses testifying for him, to examine such documentary evidence as may be produced against him, and to have subpoenas issued by the board. [1955 c 202 § 18.]

**18.72.190 Subpoenas—Contempt.** Subpoenas issued by the board to compel the attendance of witnesses at any investigation or hearing shall be served in accordance with the provisions of chapter 5.56 RCW, governing the service of subpoenas in court actions. The board shall issue subpoenas at the request and on the behalf of the accused. In case any person contumaciously refuses to obey a subpoena issued by the board or to answer any proper question put to him during the hearing or proceeding, the superior court of any county in which the proceeding is carried on or in which the person guilty of refusal to obey the subpoena or to answer the question resides or is found shall have jurisdiction, upon application by the board, to issue to such person an order requiring him to appear before the board or its hearing committee, there to produce evidence if so ordered, or there to give testimony concerning the matter under investigation or question. Any failure to obey such order of the court may be punished by the court as a civil contempt may be punished. [1955 c 202 § 19.]

*Failure to attend, penalty: RCW 5.56.061.*

**18.72.200 Report of hearing.** Within a reasonable time after holding a hearing under the provisions of

RCW 18.72.180 and 18.72.190, the committee shall make a written report of its findings of fact and its recommendations, and the same shall be forthwith transmitted to the secretary, with a transcript of the evidence. [1955 c 202 § 20.]

**18.72.210 Hearing before full board.** If the board deems it necessary, the board may, after further notice to the accused, take further testimony at a second hearing before the full board, conducted as provided for hearings before the three man hearing committee. [1955 c 202 § 21.]

**18.72.220 Basis for board's determination.** In any event, whether the board makes its determination on the findings of the hearing committee or on the findings of the committee as supplemented by a second hearing before the board, the board shall determine the charge or charges upon the merits on the basis of the evidence in the record before it. [1955 c 202 § 22.]

**18.72.230 Certificate of revocation or suspension—**  
**Reprimand.** If a majority of the members of the board then sitting vote in favor of finding the accused guilty of unprofessional conduct as specified in the charges, or any of them, the board shall prepare written findings of fact and may thereafter prepare and file in the office of the director of licenses a certificate or order of revocation or suspension, in which case a copy thereof shall be served upon the accused, or the board may reprimand the accused, as it deems most appropriate. [1955 c 202 § 23.]

**18.72.240 Dismissal of charges—Exoneration.** If the license holder is found not guilty, or if less than a majority of the members then sitting vote for a finding of guilty, the board shall forthwith order a dismissal of the charges and the exoneration of the accused. When a proceeding has been dismissed, either on the merits or otherwise, the board shall relieve the accused from any possible odium that may attach by reason of the charges made against him by such public exoneration as is necessary, if requested by the accused to do so. [1955 c 202 § 24.]

**18.72.250 Revocation or suspension of license—**  
**Stay pending review.** The filing by the board in the office of the director of motor vehicles of a certificate or order of revocation or suspension after due notice, hearing and findings in accordance with the procedure specified in this chapter, certifying that any holder of a license has been found guilty of unprofessional conduct by the board, shall constitute a revocation or suspension of the license to practice medicine and surgery in this state in accordance with the terms and conditions imposed by the board and embodied in the certificate or order of revocation or suspension. Such certificate or order of revocation or suspension, if appealed, may be stayed by the board or by the reviewing court upon such terms as is deemed proper. [1969 c 58 § 1; 1955 c 202 § 25.]

**Reviser's note:** "Director of licenses" changed to "director of motor vehicles" as department of licenses abolished and powers and duties

devolved upon department of motor vehicles. See note following Title 18 RCW digest.

**18.72.260 Contents of certificate—Recording.** The certificate or order of revocation or suspension shall contain a brief and concise statement of the ground or grounds upon which the certificate or order is based and the specific terms and conditions of such revocation or suspension, and shall be retained as a permanent record by the director of licenses. [1955 c 202 § 26.]

**18.72.270 Issuance of license after revocation or suspension.** The director of licenses shall not issue any license or any renewal thereof to any person whose license has been revoked or suspended by the board except in conformity with the terms and conditions of the certificate or order of revocation or suspension, or in conformity with any order of reinstatement issued by the board, or in accordance with the final judgment in any proceeding for review instituted under the provisions of this chapter. [1955 c 202 § 27.]

**18.72.271 Refusal of license—Reinstatement—Hearing—Record.** See RCW 18.71.120, 18.71.140 and 18.71.180.

**18.72.275 Suspension of physician's license for mental incompetency or illness, physical condition—Hearing—Examination—Reinstatement—Grounds.** (1) In the event that a physician is determined by a court of competent jurisdiction to be mentally incompetent or mentally ill, such physician shall automatically have his or her license suspended by the board upon the entry of such judgment, regardless of the pendency of an appeal.

(2) If it appears to the disciplinary board that there is reasonable cause to believe that a physician who has not been judicially determined to be mentally incompetent or mentally ill is unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition, a complaint in the name of the board shall be served upon such physician for a hearing on the sole issue of the capacity of the physician to adequately conduct his or her practice. In enforcing this paragraph the board shall, upon probable cause, have authority to compel a physician to submit to a mental or physical examination by two or more physicians designated by the board and at least one of whom may be designated by the charged party if he or she chooses. Failure of a physician to submit to such examination when directed constitutes grounds for immediate suspension of such physician's license, unless the failure was due to circumstances beyond his or her control, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A physician affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume the competent practice of medicine with reasonable skill and safety to patients.

For the purpose of this subsection (2), every physician licensed under this chapter who shall accept the privilege to practice medicine in this state shall by so practicing or by the making and filing of annual registration to practice medicine in this state, be deemed to have given his or her consent to submit to a mental or physical examination when directed in writing by the board and further to have waived all objections to the admissibility of the examining physicians' testimony or examination reports on the ground that the same constitute a privileged communication.

In any proceeding under this subsection (2), neither the record of proceedings nor the orders entered by the board shall be used against a physician in any other proceeding. [1975 c 61 § 3.]

**18.72.280 Appeal from decision of board.** Any person whose license has been revoked or suspended by the board shall have the right to a judicial review of the board's decision. Such review shall be initiated by serving on the secretary a notice of appeal and filing such notice of appeal either in the superior court of Thurston county, or in the superior court of the county in which the appellant resides, within thirty days after the filing of the certificate or order of revocation or suspension in the office of the director of licenses. [1955 c 202 § 28.]

**18.72.290 Appeal from decision of board—Transmittal of transcript.** The secretary shall, within twenty days after the service of the notice of appeal, transmit to the clerk of the superior court to which the appeal is taken a transcript of the record before the board, certified under the seal of the board, together with a certified copy of the board's written findings. [1955 c 202 § 29.]

**18.72.300 Appeal from decision of board—Scope of review.** The findings of the board, if supported by the preponderance of evidence, shall be final and conclusive. The review in the superior court shall be limited to determining whether the findings of the board are supported by the preponderance of evidence and whether the proceedings of the board were erroneous as a matter of law, or in violation of due process, or so arbitrary or capricious as to amount to an abuse of discretion, or contrary to any constitutional right, power, privilege or immunity. [1955 c 202 § 30.]

**18.72.310 Appeal from decision of board—Appeal procedure.** The procedure governing appeals to the superior court under Title 51 RCW, as amended from time to time, shall govern in matters of appeal from a decision of the board, insofar as applicable and to the extent such procedure is not inconsistent with the type of review provided in this chapter. [1955 c 202 § 31.]

**18.72.320 Appeal from decision of superior court.** Appeal shall be from the decision of the superior court. [1955 c 202 § 32.]

**18.72.330 Review though revocation not timely filed.** If the board finds the holder of any license guilty of unprofessional conduct and fails to file a certificate or



order of revocation or suspension in the office of the director of licenses within thirty days, the license holder shall have the right to a judicial review of such finding of the board in the same manner and to the same extent as if the certificate or order had been filed. [1955 c 202 § 33.]

**18.72.350 Physician members of committees to evaluate credentials and qualifications of physicians—Immunity from civil suit.** See RCW 4.24.240.

**18.72.360 Physicians filing charges or presenting evidence before committees, boards, or hospitals—Immunity from civil suit.** See RCW 4.24.250, 4.24.260.

**18.72.370 Records of medical society or hospital committee or board not subject to civil process.** See RCW 4.24.250.

**18.72.900 Severability—1955 c 202.** If any section, sentence, clause or phrase of this chapter should be held invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this medical disciplinary board act. [1955 c 202 § 46.]

**18.72.910 Short title.** This chapter may be known, as [and] cited, as the "medical disciplinary board act" [1955 c 202 § 48.]

### Chapter 18.73

## EMERGENCY MEDICAL CARE AND TRANSPORTATION SERVICES

#### Sections

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**18.73.010 Legislative finding.** The legislature finds that a state-wide program of emergency medical care is necessary to promote the health, safety, and welfare of the citizens of this state. The intent of the legislature is that the secretary of the department of social and health services develop and implement a program to promote immediate prehospital treatment for victims of motor vehicle accidents, suspected coronary illnesses, and other acute illness or trauma.

The legislature further recognizes that emergency medical care and transportation methods are constantly changing and conditions in the various regions of the state vary markedly. The legislature, therefore, seeks to establish a flexible method of implementation and regulation to meet those conditions. [1973 1st ex.s. c 208 § 1.]

**18.73.020 Supersession of local ordinances, regulations, requirements and fees.** The legislature further declares its intention to supersede all ordinances, regulations, and requirements promulgated by counties, cities and other political subdivisions of the state of Washington, insofar as they may provide for the regulation of emergency medical care, first aid, and ambulance services which do not exceed the provisions of this chapter; except that (1) license fees established in this chapter shall supersede all license fees of counties, cities and other political subdivisions of this state; and, (2) nothing in this chapter shall alter the provisions of RCW 18.71.020, 18.71.200, 18.71.210 and 18.71.220. [1973 1st ex.s. c 208 § 2.]

**18.73.030 Definitions.** Unless a different meaning is plainly required by the context, the following words and phrases as used in this chapter shall have the following meanings:

(1) "Secretary" means the secretary of the department of social and health services.

(2) "Department" means the department of social and health services.

(3) "Committee" means the emergency medical and ambulance review committee.

(4) "Ambulance" means an emergency vehicle designed and used to transport the ill and injured and to provide facilities and equipment to treat patients before and during transportation.

(5) "First aid vehicle" means a vehicle primarily designed and used to carry first aid equipment and individuals trained in first aid or emergency medical procedure.

(6) "Emergency medical technician" means a person who has successfully completed a prescribed course of instruction and who has achieved a demonstrable level of performance and competence to treat victims of severe injury or other emergent condition.

(7) "Ambulance operator" means a person who owns one or more ambulances and operates them as a private business.

(8) "Ambulance director" means a person who is a director of a service which operates one or more ambulances provided by a volunteer organization or governmental agency.

(9) "First aid vehicle operator" means a person who owns one or more first aid vehicles and operates them as a private business.

(10) "First aid director" means a person who is a director of a service which operates one or more first aid vehicles provided by a volunteer organization or governmental agency.

(11) "Emergency medical care" or "emergency medical service" means such medical treatment and care which may be rendered to persons injured, sick, or incapacitated at the scene of such injury, sickness, or incapacitation or in the ambulance.

(12) "Medical equipment" means such facilities and equipment to be used in the treatment of persons injured, sick or incapacitated carried by ambulance or first aid vehicle.

(13) "Communications system" means a radio or landline network connected with a dispatch center which makes possible the alerting and coordination of personnel, equipment, and facilities. [1973 1st ex.s. c 208 § 3.]

**18.73.040 Emergency medical and ambulance review committee—Created—Membership—Terms—Officers—Meetings—Travel expenses.** There is created an emergency medical and ambulance review committee of nine members to be appointed by the governor with the advice and consent of the senate. Members of the committee shall be persons knowledgeable in specific and general aspects of emergency medical services. Members shall be appointed for a period of three years; except, that the first appointees shall serve for terms as follows: Five for three years, two for two years, and two for one year. Further, the terms of those members representing the same field shall not expire at the same time.

The committee shall elect a chairman and a vice chairman whose terms of office shall be for one year each. The chairman shall be ineligible for reelection after serving two consecutive terms.

The committee shall meet on call by the governor, the secretary or the chairman.

All appointive members of the committee, in the performance of their duties, may be entitled to receive travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 43; 1973 1st ex.s. c 208 § 4.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.73.050 Emergency medical and ambulance review committee—Duties—Approval of rules and regulations.** The committee shall advise and assist the secretary on the identification of the requirements for prehospital emergency medical and ambulance services and practices and the formulation of implementation planning.

The secretary shall submit in writing to each member of the committee all the rules and regulations, other than procedural matters, proposed by him for adoption in accordance with the procedures of chapter 34.04 RCW. Unless, within thirty days of such notification,

five of the members of the committee notify the secretary in writing of their disapproval of such proposed rules and regulations and their reasons therefor, such rules and regulations shall be adopted by the secretary in accordance with the procedures of chapter 34.04 RCW. [1973 1st ex.s. c 208 § 5.]

**18.73.060 Planning and service areas.** (1) The secretary shall designate at least eight planning and service areas so that all parts of the state are within such an area. These designations are to be made on the basis of convenience and efficiency of delivery of needed emergency medical services.

(2) The secretary shall conduct a public hearing in a major city of each planning and service area at least sixty days prior to the formulation of a comprehensive plan for prehospital emergency medical services. Such hearing shall (a) afford an opportunity for participation by those interested in the determination of the need for, and the location of ambulances and first aid vehicles and (b) provide a public forum that affords a full opportunity for presenting views on any relevant aspect of prehospital emergency medical services. [1973 1st ex.s. c 208 § 6.]

**18.73.070 Comprehensive plan—Community support.** The secretary shall prepare and adopt a comprehensive plan for prehospital emergency medical services in the state for persons injured as a result of motor vehicle accidents, suspected coronary victims, or persons suffering other acute illnesses or trauma. This plan shall include, but not be limited to the following: (1) The training of individuals in cardiopulmonary resuscitation, basic and advanced first aid, emergency medical technician, paramedic, and other programs for the development of prehospital emergency medical services personnel in the major city of each planning and service area; (2) the future development of rules and regulations for certification and licensure of prehospital emergency medical services personnel; and, (3) the study of prehospital emergency medical services needs, such as facilities, vehicles, equipment, communications and personnel in the state.

The secretary shall encourage communities to support the care and services required to meet the provisions of this plan or to develop such care and service. If any community is unable to provide the facilities, vehicles, equipment and personnel required, the secretary shall inform the committee thereof and the committee shall take such further action as it deems advisable consistent with the provisions of this chapter. [1973 1st ex.s. c 208 § 7.]

**18.73.080 Minimum requirements to be prescribed.** (1) It shall be the duty of the secretary, pursuant to the policy set forth in this chapter, to prescribe minimum requirements for:

- (a) Ambulances;
- (b) First aid vehicles; and
- (c) Communication equipment.

These requirements shall be reviewed regularly.

(2) The secretary shall also prescribe, pursuant to the policy set forth in this chapter, minimum requirements for training of all first aid and ambulance personnel rendering emergency medical care or first aid.

(3) The secretary shall also cooperate with and assist the other agencies of state government and political subdivisions of the state of Washington who provide first aid and emergency medical training to ensure that this training is available in each planning and service area of the state pursuant to the policy set forth in this chapter.

(4) The secretary shall also prescribe minimum requirements for liability insurance to be carried by ambulance operators except that this requirement shall not apply to self-insured public bodies. [1973 1st ex.s. c 208 § 8.]

**18.73.090 Emergency medical communications.** The secretary shall establish standards for emergency medical communications for use in connection with the delivery of emergency medical services. He shall, in conjunction with other agencies of state government and political subdivisions of the state of Washington, encourage establishment of a state-wide communication system utilizing presently available facilities and such additional facilities as they become available; except, that each ambulance and first aid vehicle licensed under provisions of this chapter shall be equipped with transmitting and receiving equipment. [1973 1st ex.s. c 208 § 9.]

**Effective date—1973 1st ex.s. c 208:** The effective date of this section is January 1, 1976; see RCW 18.73.910.

**18.73.100 Variance from standards.** Upon the establishment of this chapter, the secretary may grant variance from standards only when compliance can be expected to create prohibitive costs or cause substantial reduction or loss of existing service. Variance may be granted for a period of not more than one year. The variance may be renewed upon approval of the committee. [1973 1st ex.s. c 208 § 10.]

**Effective date—1973 1st ex.s. c 208:** The effective date of this section is January 1, 1976; see RCW 18.73.910.

**18.73.110 Emergency medical technician certificates—Issuance—Qualification—Reciprocity—Fee—Duration.** The secretary shall specify the level of knowledge required to qualify as an emergency medical technician and shall issue a certificate of qualification to those applicants who pass a written and practical examination given under the secretary's direction, or who provide proof of having graduated, with satisfactory performance, from a course of instruction, of not less than eighty hours, approved by the secretary. Reciprocity may be arranged, in granting emergency medical technician certificates, with a national certifying organization whose standards are at least equal to those established by the secretary.

A fee shall be established; except, that no fee shall be required of active volunteer personnel for such certificate.

The certificate shall be valid for a period of three years and may be renewed at expiration upon proof that

the holder has attended a refresher course recognized by the department, or upon passing an examination such as given to new applicants. [1973 1st ex.s. c 208 § 11.]

**18.73.120 Certificate of advanced first aid qualification—Issuance—Duration—Fee—Exemption.** The secretary shall issue a certificate of advanced first aid qualification to those applicants who provide proof of advanced Red Cross training or its equivalent. The certificate shall be valid for a period of three years, and may be renewed at expiration upon proof that the holder has received a recognized Red Cross refresher course or its equivalent, or upon passing an examination such as that given new applicants.

A fee shall be established for such certificate; except, that law enforcement officers, fire fighting personnel, or other governmental personnel required to have advanced first aid qualification as a qualification for employment shall be exempt from this fee. [1973 1st ex.s. c 208 § 12.]

**18.73.130 Ambulance operator, ambulance director, first aid vehicle operator or first aid director licenses—Required—Exceptions—Duration—Fees.** An ambulance operator, ambulance director, first aid vehicle operator or first aid director may not operate a service in the state of Washington without holding a license for such operation, issued by the secretary when such operation is consistent with the comprehensive plan established pursuant to RCW 18.73.070, indicating the general area to be served and the number of vehicles to be used, with the following exceptions:

- (1) The United States government;
- (2) Ambulance operators and ambulance directors providing service in other states when bringing patients into this state;
- (3) Owners of businesses in which ambulance or first aid vehicles are used exclusively on company property but occasionally in emergencies may bring patients to hospitals not on company property;
- (4) Operators of vehicles pressed into service for transportation of patients in emergencies when licensed ambulances are not available or cannot meet overwhelming demand.

The license shall be valid for a period of three years and shall be renewed on request provided the holder has consistently complied with the regulations of the department and the department of motor vehicles and provided also that the needs of the area served have been met satisfactorily. The license shall not be transferable.

A license fee shall be required for ambulance operators and first aid operators. [1973 1st ex.s. c 208 § 13.]

**Effective date—1973 1st ex.s. c 208:** The effective date of this section is January 1, 1976; see RCW 18.73.910.

**18.73.140 Ambulance licenses—Issuance—Duration—Revocation—Fee—Inspections.** The secretary shall approve the issuance of an ambulance license for each vehicle so designated. The license shall be for a period of one year and may be reissued on expiration if the vehicle and its operation meet requirements in force at the time of expiration of the license

period. The license may be revoked if the ambulance is found to be operating in violation of the regulations promulgated by the department or without required equipment. The license shall be terminated automatically if the vehicle is sold or transferred to the control of anyone not currently licensed as an ambulance operator or ambulance director. The ambulance license number shall be prominently displayed on each vehicle.

A fee shall be established for vehicles operated by an ambulance operator.

Licensed ambulances shall be inspected periodically by the secretary at the location of the ambulance station. Inspection shall include adequacy and maintenance of medical equipment and supplies and the mechanical condition of the vehicle including its mechanical and electrical equipment. [1973 1st ex.s. c 208 § 14.]

**Effective date**—1973 1st ex.s. c 208: The effective date of this section is January 1, 1976; see RCW 18.73.910.

**18.73.150 Ambulance personnel requirements.** Any ambulance operated as such shall operate with sufficient personnel for adequate patient care, at least one of whom shall be an emergency medical technician under standards promulgated by the secretary. The emergency medical technician shall have responsibility for its operation and for the care of patients both before they are placed aboard the vehicle and during transit. If there are two or more emergency medical technicians operating the ambulance, a nondriving medical technician shall be in command of the vehicle. The emergency medical technician in command of the vehicle shall be in the patient compartment and in attendance to the patient.

The driver of the ambulance shall have at least a certificate of advance first aid qualification issued by the secretary pursuant to RCW 18.73.120. [1973 1st ex.s. c 208 § 15.]

**Effective date**—1973 1st ex.s. c 208: The effective date of this section is January 1, 1976; see RCW 18.73.910.

**18.73.160 First aid vehicle licenses—Issuance—Revocation—Fee—Inspections.** The secretary shall approve the issuance of a first aid vehicle license for each vehicle so designated. The license shall be for a period of one year and may be reissued on expiration if the vehicle meets requirements in force at the time of expiration of the license period. The license may be revoked if the vehicle is found to be operating in violation of regulations promulgated by the department or without required equipment. The license shall be terminated automatically if the vehicle is sold or transferred to the control of anyone not currently licensed as a first aid vehicle operator or first aid director. The first aid vehicle license number shall be prominently displayed on each vehicle.

A fee shall be established for vehicles operated by a first aid vehicle operator.

Licensed first aid vehicles shall be inspected periodically by the secretary at the location of the first aid vehicle station. Inspection shall include adequacy and maintenance of medical equipment and supplies and the mechanical condition of the vehicle, including mechanical and electrical equipment. [1973 1st ex.s. c 208 § 16.]

**Effective date**—1973 1st ex.s. c 208: The effective date of this section is January 1, 1976; see RCW 18.73.910.

**18.73.170 First aid vehicles—Personnel—Use.** The first aid vehicle shall be operated by at least one person certificated pursuant to RCW 18.73.120 and under standards promulgated by the secretary.

The first aid vehicle may be used for transportation of patients only when it is impossible or impractical to obtain an ambulance or when a wait for arrival of an ambulance would place the life of the patient in jeopardy; except, that the vehicle shall be under the command of a person certificated pursuant to RCW 18.73.120 other than the driver and shall be in attendance to the patient. [1973 1st ex.s. c 208 § 17.]

**Effective date**—1973 1st ex.s. c 208: The effective date of this section is January 1, 1976; see RCW 18.73.910.

**18.73.180 Other transportation vehicles.** Other vehicles not herein defined by this chapter shall not be used commercially or by public services for transportation of patients who must be carried on a stretcher and who required attention en route, except that such transportation may be used when directed by a physician, or when a disaster creates casualties in numbers that cannot be served by ambulances, or when any casual transportation of the infirm from his home or a health facility for routine medical treatment or care or for recreational and social purposes is desired. [1973 1st ex.s. c 208 § 18.]

**Effective date**—1973 1st ex.s. c 208: The effective date of this section is January 1, 1976; see RCW 18.73.910.

**18.73.190 Violations—Penalties.** Any person who shall violate any of the provisions of this chapter and for which a penalty is not provided shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars, or may be imprisoned in the county jail not exceeding six months. [1973 1st ex.s. c 208 § 19.]

**Effective date**—1973 1st ex.s. c 208: The effective date of this section is January 1, 1976; see RCW 18.73.910.

**18.73.200 Administrative procedure act applicable.** The administrative procedure act, chapter 34.04 RCW, shall wherever applicable govern the rights, remedies, and procedures respecting the administration of this chapter. [1973 1st ex.s. c 208 § 21.]

**18.73.900 Severability—1973 1st ex.s. c 208.** If any provision of this 1973 act, or the application thereof to any person or circumstance is held invalid, this invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1973 1st ex.s. c 208 § 20.]

**18.73.910 Effective dates—1973 1st ex.s. c 208.** The provisions of sections 1 through 8, inclusive, 11, 12, 20, 21, 22, and 23 of this 1973 act shall take effect on July 1, 1973. The provisions of sections 9, 10, and 13

through 19, inclusive, shall take effect on January 1, 1976. [1973 1st ex.s. c 208 § 22.]

**Reviser's note:** Sections 1 through 8 are codified as RCW 18.73.010 through 18.73.080, respectively; sections 11 and 12 as RCW 18.73.110 and 18.73.120 respectively; section 20 as RCW 18.73.900; section 21 as RCW 18.73.200; section 22 as RCW 18.73.910; sections 9 and 10 as RCW 18.73.090 and 18.73.100, respectively; sections 13 through 19 as RCW 18.73.130 through 18.73.190, respectively.

## Chapter 18.74 PHYSICAL THERAPY

### Sections

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*Examining committee in basic sciences: Chapter 43.74 RCW.*

*Lien of doctors: Chapter 60.44 RCW.*

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

(1) "Physical therapy" means the treatment of any bodily or mental condition of any person by the use of the physical, chemical and other properties of heat, or cold, air, light, water, electricity, sound, massage and therapeutic exercise, which includes posture and rehabilitation procedures, or the performance of test of neuro muscular function as an aid to the diagnosis or treatment of any human condition. The use of Roentgen rays and radium for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term "physical therapy" as used in this chapter.

(2) "Physical therapist" means a person who practices physical therapy as defined in this chapter under the prescription, and direction of a person licensed in this state to practice medicine and surgery.

(3) Words importing the masculine gender may be applied to females. [1961 c 64 § 1; 1949 c 239 § 1; Rem. Supp. 1949 § 10163-1.]

*Number and gender: RCW 1.12.050.*

**18.74.020 Examining committee created—Duties.** The state examining committee of physical therapists is hereby created. The examining committee shall consist of not less than three members who shall be appointed by the governor from a list submitted to him by the Washington state chapter of the American Physical

Therapy Association for a term of three years each. Each member of said examining committee shall be a registered physical therapist, a resident of this state, and shall have not less than five years' experience in the practice of physical therapy immediately preceding his appointment and shall be actively engaged in the practice of physical therapy during his incumbency. On or before July 1, 1949, three members shall be appointed by the governor, one member to serve for one, two and three years respectively. On the first day of January of each succeeding year one member shall be appointed for three years. In the event that a member of the examining committee for any reason cannot complete his term of office, another appointment shall be made by the governor in accordance with the procedure stated above to fill the remainder of the term. No member may serve for more than two successive three-year terms.

The examining committee shall have the power to make such rules not inconsistent with the law which may be necessary for the performance of its duties. The \*director of licenses shall furnish such secretarial, clerical and other assistance as the board may require. Each member of the examining committee shall, in addition to travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, receive compensation in an amount for each day actually engaged in the discharge of his duties: *Provided, however,* That such compensation shall not exceed twenty-five dollars per day.

It shall be the duty of the examining committee to pass upon the qualifications of applicants for registration, prepare the necessary lists of examination questions, conduct all examinations, determine the applicants who successfully pass examination and notify the \*director of licenses to that effect. [1975-'76 2nd ex.s. c 34 § 44; 1949 c 239 § 2; Rem. Supp. 1949 § 10163-2.]

**\*Reviser's note:** The powers and duties of the "director of licenses" have devolved to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest.

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.74.030 Qualifications of applicants.** An applicant for registration as a physical therapist shall have the following minimum qualifications:

(1) Be of good moral character;

(2) have obtained a high school education or its equivalent as determined by the examining committee; and

(3) have been graduated by a school of physical therapy approved by the examining committee. No school shall be approved unless it requires four academic years of collegiate instruction, including adequate instructions on the subjects listed in RCW 18.74.035; or if graduated prior to 1936, the school or course was approved by the American Physical Therapy Association at the time of his graduation. [1961 c 64 § 2; 1949 c 239 § 3; Rem. Supp. 1949 § 10163-3.]

**18.74.035 Examinations—Scope—Time and place—When not required.** All qualified applicants for registration as a physical therapist shall be examined by

the examining committee at such time and place as the committee may determine. Such examination shall embrace the following subjects: The applied sciences of anatomy, neuroanatomy, kinesiology, physiology, pathology, psychology, physics; physical therapy, as defined in this chapter, applied to medicine, neurology, orthopedics, pediatrics, psychiatry, surgery; medical ethics; technical procedures in the practice of physical therapy as defined in this chapter; and such other subjects as the board may deem useful to test the applicant's fitness to practice physical therapy: *Provided*, That any person who applies for registration on or before September 1, 1961, and establishes to the satisfaction of the examining committee that he at the time of application, (1) Meets the qualifications for a physical therapist as set forth in RCW 18.74.030; or (2) has passed the professional examination for physical therapists given by the American Physical Therapy Association; or (3) has practiced in the state of Washington as a physical therapist as defined in this chapter for a continuous period of three years or more, and who, at the time of application, was practicing as a physical therapist in the state of Washington or who is currently registered as a physical therapist in the state of Washington, shall be issued a certificate of registration without examination. Examinations shall be held within the state at least once a year, at such time and place as the board shall determine. [1961 c 64 § 3.]

**18.74.040 Registration certificate.** The director of licenses shall register as a physical therapist, and shall furnish a certificate of registration to, each applicant who successfully passes the examination for registration as a physical therapist. [1949 c 239 § 4; Rem. Supp. 1949 § 10163-4.]

**18.74.050 Registration certificates—Temporary and probationary certificates.** The director shall furnish a certificate of registration upon the authority of the examining committee as follows:

(1) A certificate of registration shall be issued to any person who applies for such registration and who has qualified under the provisions of this chapter. At the time of making such application such applicant shall pay to the state treasurer a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, provided no person previously registered as a physical therapist shall be required to pay an additional fee for registration under this chapter.

(2) A probational certificate of registration may be issued to any domestic trained physical therapist who has credentials acceptable to the Washington state examining committee of physical therapists and who pays the required Washington state registration fee. Such probational certificate of registration shall be available to an applicant only with respect to his first application for registration, and such certificate of registration shall expire when the examining committee publishes the results of the first Washington state examination for registration for which applicant is eligible under the regulations of the examining committee.

(3) A probational certificate of registration may be issued for a period of one year to a foreign trained physical therapist who (a) makes the required application for registration, (b) holds a diploma from a foreign school of physical therapy, (c) presents credentials as required by the Washington state examining committee of physical therapists which establish professional qualifications substantially equivalent to those required of domestic trained physical therapists, and (d) pays the required Washington state registration fee. A person holding a probational certificate may practice physical therapy solely under the supervision of a person registered as a physical therapist under this chapter. Such probational certificate of registration shall be available to an applicant only with respect to his first application for registration. Such certificate of registration shall be continued until the examining committee publishes the results of the first Washington state examination for registration held after the period for which the certificate was originally issued.

(4) A regular certificate of registration may be issued to a foreign trained physical therapist who fulfills the above requirements in subsection (3) of this section and who passes the Washington state examination for registration.

(5) A temporary certificate of registration limited to six months may be issued, without examination, to any person who submits satisfactory evidence to the examining committee that he is in this state on a temporary basis to assist in a case of medical emergency or to engage in a special physical therapy project, and who meets the qualifications for a physical therapist as set forth in RCW 18.74.030. [1975 1st ex.s. c 30 § 65; 1961 c 64 § 4; 1949 c 239 § 5; Rem. Supp. 1949 § 10163-5.]

**18.74.060 Reciprocity.** Upon the recommendation of the examining committee, the director shall register as a physical therapist and shall furnish a certificate of registration to any person who is a physical therapist registered under the laws of another state or territory, or the District of Columbia, if the qualifications for such registration required of applicant were substantially equal to the requirements under this chapter and such person has practiced in such other state or territory or the District of Columbia for at least one year prior to application. At the time of making application, such applicant shall pay to the state treasurer a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. [1975 1st ex.s. c 30 § 66; 1961 c 64 § 5; 1949 c 239 § 6; Rem. Supp. 1949 § 10163-6.]

**18.74.070 Renewal of registration—Fee.** Every registered physical therapist shall, during the month of January, apply to the director for a renewal of his registration and pay a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended to the state treasurer. Registration that is not so made before February 1st of every year, shall automatically lapse. Upon the recommendation of the examining committee the director shall revive a lapsed registration on the payment of all past unpaid renewal fees. [1975 1st

ex.s. c 30 § 67; 1971 ex.s. c 266 § 13; 1961 c 64 § 6; 1949 c 239 § 7; Rem. Supp. 1949 § 10163-7.]

**18.74.080 Revocation of registration.** The director of licenses shall refuse to grant registration to any physical therapist or shall revoke the registration of any physical therapist if he

(1) is habitually drunk or is addicted to the use of narcotic drugs;

(2) has been convicted of violating any state or federal narcotics law;

(3) has been convicted of any crime involving moral turpitude;

(4) has obtained or attempted to obtain registration by fraud or material misrepresentation;

(5) has been declared insane by a court of competent jurisdiction and has not thereafter been lawfully declared sane; or

(6) is guilty of fraud, deceit, or gross negligence or incompetency in the practice of physical therapy, or any act derogatory to the standing and morals of the profession of physical therapy, including the treatment or undertaking to treat ailments of human beings otherwise than by physical therapy and as authorized by this chapter, and the undertaking to practice independent of the prescription, and direction of a person licensed in this state to practice medicine and surgery. [1961 c 64 § 7; 1949 c 239 § 8; Rem. Supp. 1949 § 10163-8.]

**18.74.090 False advertising—Use of name and words—Duty of attorney general and prosecuting attorneys—Penalty.** A person who is not registered with the director of licenses as a physical therapist under the requirements of this chapter shall not represent himself as being so registered and shall not use in connection with his name the words or letters "P.T., R.P.T.", "physical therapy", "physiotherapy", "physical therapist" or "physiotherapist", or any other letters, words or insignia indicating or implying that he is a physical therapist. Any person who shall practice or attempt to practice as or hold himself out as practicing as a physical therapist in this state without having at the time of so doing, a valid, unrevoked certificate as provided in this chapter, shall be guilty of a gross misdemeanor. It shall be the duty of the prosecuting attorney of each county to prosecute all cases involving a violation of this chapter arising within his county. The attorney general may assist in such prosecution and shall appear at all hearings when requested to do so by the director of licenses. [1961 c 64 § 8; 1949 c 239 § 9; Rem. Supp. 1949 § 10163-9.]

*False advertising: Chapter 9.04 RCW.*

**18.74.095 False advertising—Injunctions.** If any person violates the provisions of RCW 18.74.090, the attorney general, prosecuting attorney, the director, or any citizen of the same county, may maintain an action in the name of the state to enjoin such person from practicing or holding himself out as practicing physical therapy. The injunction shall not relieve criminal prosecution but the remedy by injunction shall be in addition to the liability of such offender for criminal prosecution

and the suspension or revocation of his license. [1961 c 64 § 9.]

**18.74.100 False representation—Penalty.** A person who obtains or attempts to obtain registration as a physical therapist by any wilful misrepresentation or any fraudulent representation shall be guilty of a gross misdemeanor. [1949 c 239 § 10; Rem. Supp. 1949 § 10163-10.]

*Criminal impersonation: RCW 9A.60.040.*

**18.74.110 Limitation upon practice of therapy—Penalty.** A person registered under this chapter as a physical therapist shall not treat human ailments by physical therapy or otherwise except under the prescription, supervision and direction of a person licensed in this state to practice medicine and surgery. Any person violating the provisions of this section shall be guilty of a gross misdemeanor. [1949 c 239 § 11; Rem. Supp. 1949 § 10163-11.]

*Physicians: Chapter 18.71 RCW.*

**18.74.120 Rules and regulations—Register.** The director of licenses is authorized to adopt reasonable rules and regulations to carry this chapter into effect and may amend and revoke such rules at his discretion. The director of licenses shall keep a record of proceedings under this chapter and a register of all persons registered under it. The register shall show the name of every living registrant, his last known place of business and last known place of residence and the date and number of his registration and certificate as a registered physical therapist. The director of licenses shall, during the month of April of every year in which the renewal of registration is required, compile a list of registered physical therapists authorized to practice physical therapy in the state and shall mail a copy of that list to the prosecuting attorney of each county, the superintendent of each known hospital in the state and every physician licensed in this state to practice medicine and surgery. Any interested person in the state is entitled to obtain a copy of that list on application to the director of licenses and payment of such amount as may be fixed by him, which amount shall not exceed the cost of the list so furnished. [1949 c 239 § 12; Rem. Supp. 1949 § 10163-12.]

**18.74.125 Construction of chapter—Activities not prohibited—Use of letters or words in connection with name.** Nothing in this chapter shall prohibit any person licensed in this state under any other act from engaging in the practice for which he is licensed. Nothing in this chapter shall prohibit any person who, at any time prior to January 1, 1961 was practicing any healing or manipulative art in the state of Washington and designating the same as physical therapy or physiotherapy, from continuing to do so after the passage of this amendatory act: *Provided*, That no such person shall represent himself as being registered and shall not use in connection with his name the words or letters "registered" or "licensed" or "R.P.T." [1961 c 64 § 10.]



**Reviser's note:** The language "after the passage of this amendatory act" refers to chapter 64, Laws of 1961 which passed the House March 1, 1961, passed the Senate February 27, 1961, approved by the governor March 6, 1961, and became effective at midnight June 7, 1961.

**18.74.900 Severability—1949 c 239.** If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [1949 c 239 § 13.]

**18.74.910 Severability—1961 c 64.** If any provision of this amendatory act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this amendatory act which can be given effect without the invalid provision or application, and to this end the provisions of this amendatory act are declared to be severable. [1961 c 64 § 11.]

**Reviser's note:** The language "this amendatory act" refers to chapter 64, Laws of 1961 codified as RCW 18.74.010, 18.74.030, 18.74.035, 18.74.050, 18.74.060, 18.74.070, 18.74.080, 18.74.090, 18.74.095 and 18.74.125.

## Chapter 18.78 PRACTICAL NURSES

### Sections

18.78.010	Definitions.
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*Actions against, limitation of:* RCW 4.16.350.

*Actions for negligence against, evidence and proof required to prevail:* RCW 4.24.290.

*Crimes relating to pregnancy and childbirth:* RCW 9A.32.060.

*Labor regulations, collective bargaining—Health care activities:* Chapter 49.66 RCW.

*Nurse's lien:* Chapter 60.44 RCW.

*Registered professional nurses:* Chapter 18.88 RCW.

**18.78.010 Definitions.** Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Board" shall mean "Washington state board of practical nurse examiners."

(2) "Director" shall mean "director of licenses."

(3) "Licensed practical nurse, abbreviated L.P.N." shall mean "a person licensed by the board to practice practical nursing."

(4) "Licensed practical nurse practice" shall mean "the performing for compensation, services required in the nursing care of the ill, injured or infirm, under the direction of a licensed physician and surgeon, osteopathic physician and surgeon, dentist, chiropodist, or under the direction and supervision of a licensed registered professional nurse and not involving the specialized education, knowledge, skill and exercise of independent judgment required in professional nursing."

(5) "Supervision" shall mean the critical evaluation of acts performed with authority to take corrective action, but shall not be construed so as to require direct and bodily presence. [1967 c 79 § 1; 1963 c 15 § 1; 1949 c 222 § 1; Rem. Supp. 1949 § 10173-27.]

**Reviser's note:** The powers and duties of the director of licenses have devolved to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest.

**Persons having previous qualifications:** "The director, upon certification of the board, shall issue a license to practice as a practical nurse to any person who shall submit to the board on or before January 1, 1950, written evidence, verified under oath, that such applicant:

(1) Is twenty years of age;

(2) Is a citizen of the United States or who has applied for citizenship, and a resident of the state of Washington;

(3) Is of good moral character;

(4) Has had two years' or more experience in the care of the sick preceding the passing of this act, and who submits with his or her application for a license affidavits of two licensed physicians or two registered professional nurses in this state, or of one of each, that said licensed physicians or registered nurses have personal knowledge of the applicant's qualifications, and that said applicant has been so engaged as a practical nurse.

The right to obtain a license as a practical nurse as provided in this section shall not continue after January 1, 1950." [1949 c 222 § 8.]

**18.78.020 Board of examiners created.** There is hereby created a board to be known and designated as the "Washington state board of practical nurse examiners." The board shall be composed of five members, appointed by the governor as follows:

(1) Two members shall be registered professional nurses having had no less than five years' experience in the practice of nursing, one of whom shall be a registered nurse actively engaged in instructing in an approved practical nursing course, and one of whom shall be a registered nurse experienced in instructing in an approved practical nursing course;

(2) One registered professional nurse who is actively engaged in the supervision of an approved program for practical nursing;

(3) Two licensed practical nurses, at least twenty-three years of age, who shall have had not less than three years' actual experience as a licensed practical nurse and who have completed an approved course in practical nursing. [1967 c 79 § 2; 1949 c 222 § 2; Rem. Supp. 1949 § 10173-28.]

**18.78.030 Terms of members—Vacancies.** The members of the first board shall be appointed to serve as follows:

- (1) One professional nurse and one practical nurse for a term of five years;
- (2) One practical nurse for a term of four years;
- (3) One professional nurse and one supervisor of practical nurses for terms of three years each.

Thereafter all appointments shall be for terms of five years each.

Vacancies occurring on the board shall be filled for the unexpired term by appointment of the governor, who also may remove any member from the board for neglect of duty required by law, or for incompetency or unprofessional or disorderly conduct. [1949 c 222 § 3; Rem. Supp. 1949 § 10173-29.]

**18.78.040 Jurisdiction of board—Compensation of members.** The board shall have jurisdiction over the practical nurses of the state of Washington as distinguished from the registered professional nurses in all matters relating to practical nursing. Each board member shall receive twenty-five dollars for each day engaged in the discharge of his or her duties as a member of the board, and shall be paid travel expenses while away from home in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. The members of the board shall appoint a chairman and a secretary from among its entire members, who shall serve until his or her successor is appointed by the board. [1975-'76 2nd ex.s. c 34 § 45; 1967 c 188 § 4; 1949 c 222 § 4; Rem. Supp. 1949 § 10173-30.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.78.050 Duties of board.** The board shall conduct examinations for all applicants for licensure under this chapter and shall certify to the division of professional licensing in the department of motor vehicles for licensing, those applicants duly qualified. The board shall also determine and formulate what constitutes an approved practical nursing course, the same to be written and filed with the secretary of the board. The board may amend said requirements from time to time and any such amendment shall also be in writing and filed with the secretary of the board. Upon request of any hospital or other agency within the state of Washington, the secretary of the board shall furnish and forward by mail a copy of said written requirements constituting an approved course, and any written amendments thereto. [1967 c 79 § 3; 1949 c 222 § 5; Rem. Supp. 1949 § 10173-31.]

**18.78.060 Qualifications of applicants for license—Examination.** An applicant for a license to practice nursing as a licensed practical nurse shall submit to the board written evidence, on a form provided by the board, verified under oath, that the applicant:

- (1) Is at least eighteen years of age;
- (2) Is of good moral character;
- (3) Is of good physical and mental health;

(4) Has completed at least a tenth grade course or its equivalent, as determined by the board;

(5) Has completed an approved course of not less than nine months for the training of practical nurses, or its equivalent, as determined by the board.

To be licensed as a licensed practical nurse, each applicant shall be required to pass a written examination in such subjects as the board may determine within the scope of and commensurate with the work to be performed by a licensed practical nurse. Each written examination may be supplemented by an oral or practical examination. Any applicant failing to pass such an examination may apply for reexamination. Upon passing such examination as determined by the board, the director shall issue to the applicant a license to practice as a licensed practical nurse, providing the license fee is paid by the applicant and the applicant meets all other requirements of the board. [1971 ex.s. c 292 § 26; 1963 c 15 § 2; 1949 c 222 § 6; Rem. Supp. 1949 § 10173-32.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**18.78.070 Licenses to students and nonresidents.** The director may issue a license to practice as a licensed practical nurse without examination to any applicant who has completed an approved course in practical nursing prior to January 1, 1950. The director may also issue a license to practice as a licensed practical nurse without examination to any applicant who has been duly licensed or registered as a licensed practical nurse, or a person entitled to perform similar services, under a different title, under the laws of another state, territory or foreign country if, in the opinion of the board, the applicant has qualifications equivalent to the qualifications required in this state, and who establishes evidence thereof. [1949 c 222 § 7; Rem. Supp. 1949 § 10173-33.]

**18.78.080 License fee.** All applicants applying for a license to practice as a licensed practical nurse with or without examination, as provided in this chapter, shall pay a license fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended to the department of motor vehicles: *Provided, however,* That the applicant applying for a reexamination shall pay a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. [1975 1st ex.s. c 30 § 68; 1963 c 15 § 3; 1949 c 222 § 9; Rem. Supp. 1949 § 10173-35.]

**18.78.090 Renewal.** Every licensed practical nurse in this state shall register annually with the division of professional licensing in the department of motor vehicles, on or before the first day of March, and shall pay an annual fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, and thereupon the license of such person shall be renewed for a period of one year. Any failure to register and pay the annual renewal registration fee shall render the license invalid, but such license shall be reinstated upon written application therefor to the division of professional licensing, and upon payment to the state of a penalty fee

determined by the director as provided in RCW 43.24-.085 as now or hereafter amended, together with all delinquent annual license renewal fees. [1975 1st ex.s. c 30 § 69; 1971 ex.s. c 266 § 14; 1967 c 79 § 4; 1963 c 15 § 4; 1949 c 222 § 10; Rem. Supp. 1949 § 10173-36.]

**18.78.100 Supervisor of practical nurse education—Qualifications.** The director shall appoint a supervisor of practical nurse education who shall act as an executive to the board to carry out the provisions of this chapter and who shall have the following qualifications:

- (1) Be a registered professional nurse in the state of Washington;
- (2) Be the holder of a baccalaureate degree from an accredited university or college;
- (3) Have not less than five years' experience in the field of nursing;
- (4) Have not less than two years' experience in nursing education. [1971 c 68 § 1; 1949 c 222 § 11; Rem. Supp. 1949 § 10173-37.]

**18.78.110 Compensation of supervisor.** The director shall fix the compensation and provide for travel expenses in accordance with RCW 43.03.050 and 43.03-.060 as now existing or hereafter amended for said supervisor of practical nurse education and shall provide such clerical assistance as said director may deem necessary. [1975-'76 2nd ex.s. c 34 § 46; 1949 c 222 § 12; Rem. Supp. 1949 § 10173-38.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.78.120 Compensation of board members—Payment.** The director shall provide each member of the board with travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended and shall pay to the board members the compensation as provided herein. [1975-'76 2nd ex.s. c 34 § 47; 1949 c 222 § 13; Rem. Supp. 1949 § 10173-39.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.78.130 Suspension, revocation of license.** The license of any person granted pursuant to this chapter may be suspended for a limit of time or revoked by the director for any of the following causes that shall be deemed to be unprofessional conduct within the meaning of this chapter:

- (1) The employment of fraud, misrepresentation or deception in obtaining any such license;
- (2) Conviction of a crime involving moral turpitude;
- (3) Chronic alcoholism or habitual use of drugs;
- (4) Impersonation of a registered professional nurse;
- (5) Violation of any of the provisions of this chapter. [1949 c 222 § 14; Rem. Supp. 1949 § 10173-40.]

*Criminal impersonation: RCW 9A.60.040.*

*Narcotics: Chapter 69.32 RCW.*

**18.78.140 Procedure for suspension or revocation.** Proceedings to revoke or suspend any license granted

pursuant to this chapter may be instituted by the director on his own complaint, or on the verified complaint of any person filed with the director. Such complaint shall set forth the facts constituting the grounds for which said license shall be revoked or suspended. The board of directors provided for in this chapter, together with the director, shall constitute a committee to hear and determine the charges and make findings of fact and conclusions. The director shall serve upon the license-holder against whom the complaint is made a notice in writing twenty days prior to the date set for the hearing, which notice shall specify the offense with which said person is charged, shall contain a copy of the complaint, and shall state the time and place of hearing. All hearings shall be held in Olympia unless the director shall fix a different place. Said notice may be served by registered mail addressed to the license-holder at his or her address last known to the director. The director shall have the power to issue subpoenas to compel the attendance of witnesses, or the production of books or documents. The accused person shall have an opportunity to defend and to have counsel and may have such subpoenas as he or she may desire, issued by the director. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath, administered by the director. Testimony may be taken by deposition under such rules as the director may prescribe. The committee shall hear and determine the charges and shall make findings of fact and conclusions upon the evidence produced, and shall file the same in the director's office. The director shall serve a copy of said findings and conclusions by registered mail upon the accused. The revocation or suspension of a license to practice shall be in writing and signed by the director, and shall state the grounds upon which such order is based. The accused person shall have the right to appeal from such order to the superior court of Thurston county within twenty days after a copy of such order is served upon such person, for the purpose of having the reasonableness and lawfulness of said order inquired into and determined. On such appeal the entire record laid before the committee shall be certified by the director to said superior court, and the review on appeal shall be confined to the evidence and exhibits introduced at the hearing before the committee. An appeal shall lie to the supreme court or the court of appeals from the judgment of the superior court in the manner provided by law in civil cases. [1971 c 81 § 60; 1949 c 222 § 15; Rem. Supp. 1949 § 10173-41.]

*Witnesses—Compelling attendance: Chapter 5.56 RCW.*

**18.78.150 Rules and regulations—Register.** The director shall adopt such rules and regulations as he shall deem necessary for carrying this chapter into effect and shall keep a register of the names of all persons licensed under this chapter, which register shall be open to the public for inspection at all reasonable times. [1949 c 222 § 16; Rem. Supp. 1949 § 10173-42.]

**18.78.160 Limitation upon practice.** This chapter shall not be construed as conferring authority to practice medicine or surgery, or to practice as a registered nurse,

or to undertake the treatment or cure of disease, pain, injury, deformity or physical condition; nor shall it be construed as prohibiting the care of the sick when done in connection with the practice of religious tenets of any church by adherents thereof, in caring for adherents thereof or caring for a patient of any drugless doctor. [1949 c 222 § 17; Rem. Supp. 1949 § 10173-43.]

**18.78.170 Penalty for practice without license.** It shall be a gross misdemeanor for any person to practice nursing as a licensed practical nurse in this state unless such person shall have first obtained a license from the board: *Provided*, That nothing in this chapter shall prohibit any person from nursing the sick for hire who does not in any way assume or represent himself or herself to be a "licensed practical nurse, abbreviated L.P.N." [1967 c 79 § 5; 1949 c 222 § 18; Rem. Supp. 1949 § 10173-44.]

**18.78.175 Injunctions to prevent violations.** If any person engages in licensed practical nurse practice without possessing a valid license so to do, or if a person violates the provisions of RCW 18.78.130, the attorney general, any prosecuting attorney, the board, or any citizen of the same county may maintain an action in the name of the state to enjoin such person from engaging in licensed practical nurse practice. The injunction shall not relieve from criminal prosecution, but the remedy by injunction shall be in addition to the liability of such offender to criminal prosecution and to suspension or revocation of his or her license. [1967 c 79 § 7.]

**18.78.182 Licensed practical nurses may administer medications, etc., under supervision.** A licensed practical nurse under his or her license may perform for compensation nursing care (as that term is usually understood) of the ill, injured, or infirm, and in the course thereof is authorized, at or under the direction and supervision of a licensed physician and surgeon, osteopathic physician and surgeon, dentist, chiropodist (acting within the scope of his license), or at or under the direction and supervision of a licensed registered professional nurse, to administer drugs, medications, treatments, tests, injections, and inoculations, whether or not the piercing of tissues is involved and whether or not a degree of independent judgment and skill is required, when selected to do so by one of the licensed practitioners designated in this section, or by a licensed registered professional nurse who need not be physically present; provided the order given by such physician, dentist, or chiropodist be reduced to writing within a reasonable time and made a part of the patient's record. [1971 c 68 § 2; 1967 c 79 § 6.]

*Authority of licensed professional nurses: RCW 18.88.285.*

**18.78.900 Severability—1949 c 222** Should any section of this chapter, or any portion of any section, for any reason be held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. [1949 c 222 § 19.]

## Chapter 18.81 PROPHYLACTIC VENDORS

### Sections

18.81.010	Definitions.
18.81.020	Sale of prophylactics—Licenses required.
18.81.025	Sale of prophylactics—Physicians and surgeons excepted.
18.81.035	Retail dealer's license—Eligibility.
18.81.040	License fees.
18.81.050	Refusal, revocation and suspension of licenses.
18.81.060	Sale of inefficacious prophylactics prohibited.
18.81.065	Seizure and destruction of nonconforming prophylactics.
18.81.070	Violations—Penalties.
18.81.080	Enforcement provisions.
18.81.900	Severability—1939 c 192.

**18.81.010 Definitions.** For the purposes of this chapter, words and phrases shall have the following meaning:

(1) "Board" shall mean the Washington state board of pharmacy;

(2) "Wholesale" shall mean a sale by a manufacturer, wholesale dealer, distributor or jobber to a person who sells, or intends to sell, direct to the user, and "wholesale dealer" shall mean such a manufacturer, wholesale dealer, distributor or jobber;

(3) "Retail" shall mean a sale to the ultimate user, and "retail dealer" shall mean a person who so sells;

(4) "Prophylactic" shall mean any device or medical preparation or compound which is or may be used, designed, intended or which has or may have special utility, for the prevention and/or treatment of venereal diseases;

(5) "Person" shall mean either an individual, corporation, copartnership, firm or association;

(6) "Sell" and "sale" shall, in addition to their usual and ordinary meanings, include, possess in violation of the intent of this chapter, exchange, give away or gift, or any disposal. [1939 c 192 § 1; RRS § 10146-1.]

**18.81.020 Sale of prophylactics—Licenses required.** It shall be unlawful for any person to sell any prophylactic at wholesale or at retail without having, respectively, a valid and subsisting wholesale dealer's or retail dealer's license issued under the provisions of this chapter; nor shall any licensed wholesale dealer make any sale other than at wholesale, nor any licensed retail dealer make any sale other than at retail. [1939 c 192 § 2; RRS § 10146-2. FORMER PART OF SECTION: 1939 c 192 § 5; RRS § 10146-5, now codified as RCW 18.81.025.]

**18.81.025 Sale of prophylactics—Physicians and surgeons excepted.** It shall be unlawful for any person, except a physician and surgeon duly licensed as such under the laws of the state of Washington, to sell any prophylactic without being the holder of a valid and subsisting license issued under the provisions of this chapter or to sell any prophylactic except as authorized by the provisions of this chapter. [1939 c 192 § 5; RRS § 10146-5. Formerly RCW 18.81.020, part.]

**18.81.035 Retail dealer's license—Eligibility.** A retail dealer's license shall be issued to any person holding a valid license to operate a pharmacy, dispensary,

hospital or clinic and to any public or private program engaged in venereal disease prevention or treatment, family planning or the care, treatment or rehabilitation of any person. Further, the board of pharmacy shall issue a retail dealer's license in any area where it determines prophylactics are not readily available, and to any person or program where the local health officer determines that, in the interest of public health, prophylactics should be made available. [1971 ex.s. c 185 § 3.]

**18.81.040 License fees.** The fee for a wholesale dealer's license shall be fifty dollars and for a retail dealer's license shall be ten dollars. A separate license shall be required for each store, warehouse, establishment or place of business from which sales are made. All licenses shall expire on the thirty-first day of May next following the date of issue, and shall be renewed and expire annually as in the case of the original license. The board shall issue the license required upon application and exhibition of a duplicate receipt showing payment to the state treasurer of the prescribed fee. [1971 ex.s. c 201 § 7; 1939 c 192 § 4; RRS § 10146-4.]

**Severability**—1971 ex.s. c 201: See note following RCW 18.64.040.

**18.81.050 Refusal, revocation and suspension of licenses.** The board shall have power to cancel or suspend for a definite period any license issued, or to withhold issuance of a renewal license to any licentiate who is convicted of a violation of any provisions of this chapter; and no license suspended shall be reinstated or new license issued to such licentiate, except at the pleasure of the board. [1939 c 192 § 8; RRS § 10146-8.]

**18.81.060 Sale of inefficacious prophylactics prohibited.** No person shall sell any prophylactic which has no efficacy as an agent for the prevention and/or treatment of venereal diseases; and the action of the board in determining whether a particular prophylactic is or is not efficacious shall be conclusive, except for arbitrary, fraudulent or capricious action. [1939 c 192 § 6; RRS § 10146-6. FORMER PART OF SECTION: 1939 c 192 § 9, part; RRS § 10146-9, part, now codified in RCW 18.81.065.]

**18.81.065 Seizure and destruction of nonconforming prophylactics.** The board, through its duly authorized agents, or through any state license inspector or peace officer, is authorized to seize and destroy any prophylactic which does not conform to the requirements of this chapter; and in any criminal proceeding instituted for violation of any of the provisions of this chapter, the court in which proceeding is commenced or is pending shall have power to order the seizure and destruction of any prophylactic possessed in violation of the provisions of this chapter. [1939 c 192 § 9; RRS § 10146-9. Formerly RCW 18.81.060, part and 18.81.070, part.]

**18.81.070 Violations—Penalties.** Violation of any of the provisions of this chapter or of any of the rules and regulations of the board established hereunder shall be a misdemeanor. [1939 c 192 § 10; RRS § 10146-10.]

FORMER PART OF SECTION: 1939 c 192 § 9, part; RRS § 10146-9, part, now codified in RCW 18.81.065.]

**18.81.080 Enforcement provisions.** The board shall have charge of the enforcement of this chapter, and to that end is authorized to make rules and regulations not inconsistent with the chapter: *Provided*, That failure of the board to act shall not prevent enforcement in the same manner as other penal statutes. [1939 c 192 § 7; RRS § 10146-7.]

**18.81.900 Severability**—1939 c 192. If any section, sentence, clause or phrase of this chapter is for any reason held to be unconstitutional such decision shall not affect the validity of the remaining portions of the chapter. The legislature hereby declares that it would have passed this chapter, and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, sentences, clauses or phrases be declared unconstitutional. [1939 c 192 § 11.]

## Chapter 18.82 PROPRIETARY SCHOOLS

### Sections

18.82.010	Declaration of purposes—Liberal construction.
18.82.020	Definitions.
18.82.030	Registration required—Fee—Forms—Contents.
18.82.040	Cancellation of enrollment by student—Return of materials—Refund.
18.82.050	Conduct, practices and information dissemination required of proprietary schools.
18.82.060	Agents' permits.
18.82.070	Rules and regulations—Advisory committee.
18.82.080	Unfair acts or practices.
18.82.090	Notes, negotiable instruments, or contracts for payment of courses—Unenforceable unless compliance with chapter.
18.82.900	Short title.
18.82.910	Effective date—1967 ex.s. c 72.
18.82.920	Severability—1967 ex.s. c 72.

**18.82.010 Declaration of purposes**—Liberal construction. The legislature hereby declares that the provisions of this chapter are enacted in the exercise of the police power of this state for the protection of the health, peace, safety, and general welfare of the people of this state; for the general improvement of educational programs available to the residents of this state; to prevent misrepresentation, fraud, and collusion in offering education programs; to establish higher standards for, and to protect, preserve, foster, improve, and encourage the educational programs offered to the public; and to encourage the residents of Washington to attain a high degree of excellence in the pursuit of education. To these ends, this chapter shall be liberally construed. [1967 ex.s. c 72 § 1.]

**18.82.020 Definitions.** As used in this chapter:

(1) "Proprietary school", except as hereinafter in this section provided, means any business enterprise whether operated on a profit or nonprofit basis which maintains a place or places of business either within or without this state and which offers or maintains a course or courses of instruction or study through classroom instruction or

by correspondence or both whether such instruction or study is given in a single location or several locations through branches or otherwise, for the purpose of training or preparing persons for a field of endeavor, whether in a business or trade, or in a technical, professional, or industrial occupation.

The definition of "proprietary school" shall not include schools or courses of instruction:

(a) Approved by the state superintendent of public instruction, the state board of education, or the state board for vocational education;

(b) Supported entirely or partly by state or local taxes or federal funds;

(c) Approved as a private school for meeting the compulsory attendance requirements in RCW 28A.27.010;

(d) Accredited by the applicable national or regional accrediting agency recognized by either the United States Department of Health, Education and Welfare, Office of Education, or the state superintendent of public instruction, state board of education, or state board for vocational education;

(e) Sponsored by an employer for the training and preparation of its own employees, or by a trade, business, or professional organization recognized by the state board for vocational education for the instruction of members of such organization; or

(f) Regulated or licensed as to course content by any agency of the state or under any occupational licensing act of the state, or recognized by the apprenticeship council under an agreement registered with said council pursuant to chapter 49.04 RCW;

(2) "Director" means the director of the division of professional licensing of the department of motor vehicles. [1967 ex.s. c 72 § 2.]

**18.82.030 Registration required—Fee—Forms—Contents.** No proprietary school may offer a course of instruction within this state without first registering as a proprietary school with the director and paying an annual registration fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended before July first of each year to the director. Such registration shall be on forms provided by the director and shall contain: (1) The names of the individual owner, or if the owner is a corporation or partnership, the names of the officers and directors or members thereof; (2) the administrator, business address, and location of the proprietary school; (3) the field or fields of endeavor for which the proprietary school purports to train or prepare persons, and a brief description of the courses offered by the proprietary school. [1975 1st ex.s. c 30 § 70; 1967 ex.s. c 72 § 3.]

**18.82.040 Cancellation of enrollment by student—Return of materials—Refund.** Any person who enrolls as a student with a proprietary school shall be entitled to cancel his contract of enrollment immediately after the first classroom instruction session by informing the classroom instructor of his election to cancel, or, if a correspondence course, within the next business day after receiving a part of the instructional materials, by

sending notice of cancellation by registered mail, return receipt requested, addressed to the proprietary school. Upon such cancellation and return of all instructional materials in undamaged condition the student shall be entitled to a refund of at least ninety percent of the amount which he contracted to pay for the course or courses. [1967 ex.s. c 72 § 4.]

**18.82.050 Conduct, practices and information dissemination required of proprietary schools.** Each proprietary school shall:

(1) Furnish each student applicant with a brief description of the course or courses of instruction and schedule of tuition and notify each student of his right to cancel pursuant to RCW 18.82.040 and his right to a certificate pursuant to subsection (5) of this section, prior to enrollment;

(2) Adhere to a tuition refund schedule presented in published form prior to enrollment for any student who elects to discontinue training or one excluded therefrom;

(3) Comply with all applicable state and local laws and ordinances, including rules and regulations adopted pursuant thereto;

(4) Refrain from using any false, misleading or deceptive advertising;

(5) Upon satisfactory completion of training or preparation by any student, if he requests a certificate, give a certificate to such student which indicates the course or courses of instruction which have been satisfactorily completed. [1967 ex.s. c 72 § 5.]

**18.82.060 Agents' permits.** (1) No person shall for remuneration sell any course or courses in this state for any proprietary school, or solicit students therefor in this state, without first obtaining an agent's permit from the director. If the agent represents more than one school, a separate permit shall be obtained for each school represented by him: *Provided*, That if an agent represents a school with more than one location or branches he need only obtain a single permit for such school. Upon approval for a permit the director shall issue a pocket card to the agent, giving his name and address, the name and address of his employing correspondence school, and certifying that the person whose name appears on the card is an authorized agent of the school. A permit shall be valid until the subsequent July 1st from the date on which it was issued.

(2) The application for a permit or renewal shall be made on forms to be furnished by the director and shall be accompanied by a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended.

(3) Any permit applied for pursuant to this section shall be granted or denied within thirty days of the receipt of the application therefor by the director. If the director has not completed his determination with respect to the issuance of a permit pursuant to this section within such thirty-day period, he shall issue a temporary permit to the applicant, which permit shall be sufficient to meet the requirements of this chapter until such time as such determination is made. An agent's permit shall be issued if the director is satisfied that the

applicant does in fact represent the proprietary school for which a permit is requested, that the applicant is of good moral character, and that a previous permit for such person has not been revoked.

(4) Any permit issued may be revoked by the director if the holder of the permit solicits or enrolls students through fraud, deception, or misrepresentation or upon a finding that a fact or condition exists which would have warranted the denial of the issuance of the permit, had such fact or condition existed at the time of original application.

(5) The applicant for, or holder of, an agent's permit shall be entitled to an opportunity for an agency hearing with respect to the denial of an application therefor, or the revocation or suspension thereof, by the director, and the applicable provisions of the Administrative Procedure Act found in chapter 34.04 RCW, as it now exists or may hereafter be amended, shall apply with respect thereto.

(6) The issuance of a permit pursuant to this section shall not be deemed to constitute approval of any course or the proprietary school offering or administering the same. Any representation contrary to this paragraph or tending to imply that a permit issued pursuant to this section constitutes such approval shall be misrepresentation within the meaning of this chapter. [1975 1st ex.s. c 30 § 71; 1967 ex.s. c 72 § 6.]

**18.82.070 Rules and regulations—Advisory committee.** The director is authorized to adopt rules and regulations for the administration and enforcement of RCW 18.82.030 and 18.82.060, and describing and forbidding deceptive advertising, and may establish an advisory committee of owners or operators of proprietary schools and of other persons with knowledge in the fields to which this chapter applies, to advise him in its administration. [1967 ex.s. c 72 § 7.]

**18.82.080 Unfair acts or practices.** (1) It is hereby declared to be an unfair act or practice or unfair method of competition in the conduct of trade or commerce for the purpose of the application of the consumer protection act found in chapter 19.86 RCW: (a) for any proprietary school to violate RCW 18.82.030, 18.82.040 or 18.82.050 or to offer a course, or courses, of instruction which purports to train or prepare persons for a field of endeavor but which in fact cannot reasonably be expected to satisfactorily train or prepare the average student in such course, or courses, for such field of endeavor; or (b) for any person to violate RCW 18.82.060.

(2) In considering whether a course of instruction could reasonably be expected to train or prepare the average student to qualify for a field of endeavor the following factors shall be considered by the court: (a) the equipment, materials and course content furnished, (b) the qualifications, training and experience of instructors, and (c) the normal and usual requirements of training and experience prevailing in the particular field of endeavor. [1967 ex.s. c 72 § 8.]

**18.82.090 Notes, negotiable instruments, or contracts for payment of courses—Unenforceable unless compliance with chapter.** No note, negotiable instrument, or contract relating to payment for a course or courses of instruction shall be enforceable by any proprietary school in the courts of this state, unless said proprietary school and its agents shall have complied with the provisions of this chapter. [1967 ex.s. c 72 § 9.]

**18.82.900 Short title.** This chapter may be cited as "The Proprietary School Act". [1967 ex.s. c 72 § 11.]

**18.82.910 Effective date—1967 ex.s. c 72.** This chapter shall become effective July 1, 1968. [1967 ex.s. c 72 § 13.]

**18.82.920 Severability—1967 ex.s. c 72.** If any provision of this act, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1967 ex.s. c 72 § 12.]

## Chapter 18.83 PSYCHOLOGISTS

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**18.83.010 Definitions.** When used in this chapter:

(1) The "practice of psychology" means the application of established principles of learning, motivation, perception, thinking and emotional relationships to problems of evaluation, group relations and behavior adjustment, including but not limited to: (a) counseling and guidance; (b) use of psychotherapeutic techniques



with clients who have adjustment problems in the family, at school, at work or in interpersonal relationships; (c) measuring and testing of personality, intelligence, aptitudes, emotions, public opinion, attitudes and skills.

This definition does not include the teaching of principles of psychology for accredited educational institutions, or the conduct of research in problems of human or animal behavior.

Nothing in this definition shall be construed as permitting the administration or prescribing of drugs or in any way infringing upon the practice of medicine and surgery as defined in chapter 18.71 RCW.

(2) "Director" means director of licenses.

(3) "Board" means the board of psychologist examiners created by this chapter. [1965 c 70 § 1; 1955 c 305 § 1.]

**Reviser's note:** The powers and duties of the director of licenses have devolved to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest.

**18.83.020 License required—Use of "psychology" or terms of like import.** (1) To safeguard the people of the state of Washington from the dangers of unqualified and improper practice of psychology, it shall be unlawful for any person unless exempted from the provisions of this chapter, to represent himself to be a psychologist without first obtaining a license as provided in this chapter.

(2) A person represents himself to be a psychologist when he adopts or uses any title or any description of services which incorporates one or more of the following terms: "psychology," "psychological," "psychologist," or any term of like import. [1965 c 70 § 2; 1955 c 305 § 2.]

**18.83.030 Examining board—Composition—Terms—Vacancies—Chairman.** There is hereby created an examining board of psychology, hereinafter referred to as the board, which shall be charged with the duty of examining the qualifications of applicants for licensing. The board shall consist of five persons appointed by the director. Each member of the board shall be a citizen of the United States, over eighteen years of age, who shall have actively practiced or taught psychology in the state of Washington for at least three years immediately preceding his appointment, and who is, in the case of the first members of the board, entitled to licensing under this chapter. The director shall appoint the board within thirty days after the effective date of this chapter. At the first meeting of the board the members shall determine by lot one member to serve for three years, two members to serve for two years and two members to serve one year. Upon the expiration of each member's term, the governor shall appoint a licensed psychologist as successor who shall serve for a term of three years. Upon the death, resignation, or removal of a member, the governor shall appoint a successor to serve for the unexpired term. The board shall elect one of its members to serve as chairman. [1971 ex.s. c 292 § 27; 1965 c 70 § 3; 1955 c 305 § 3.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**18.83.040 Examining board—Meetings—Quorum.** The first meeting of the board shall be held within thirty days after the appointment of the board at a specific time and place designated by the director. Thereafter the board shall meet at least once a year and at as many other times as the board deems appropriate to properly discharge its duties. All meetings shall be held in Olympia, Washington, or at such other place as may be designated by the director. Three members of the board shall constitute a quorum. [1965 c 70 § 4; 1955 c 305 § 4.]

**18.83.050 Examining board—Powers and duties.** It shall be the duty of the board to:

(1) Examine the qualifications of applicants for licensing under this chapter, to determine which applicants are eligible for licensing hereunder and forward to the director the names of applicants so eligible.

(2) Prepare, give and grade such examinations to applicants as are required by the terms of this chapter. The board shall determine the scope and length of such examinations, and what score shall be deemed a passing score. Such examination shall be oral and written. The board may designate one or more of its members to personally supervise the taking of the examinations by applicants.

(3) Keep a complete record of its own proceedings, of the questions given in examinations, of the names and qualifications of all applicants, the names and addresses of all licensed psychologists. The examination paper of such applicant shall be kept on file for a period of at least one year after examination. [1965 c 70 § 5; 1955 c 305 § 5.]

**18.83.051 Examining board—Compensation and expenses—"State board of psychological examiners' account"—Remittance of justice court fines, fees, penalties and forfeitures.** There is hereby created the "state board of psychological examiners' account" within the state general fund. All moneys received under chapter 18.83 RCW by the state treasurer shall be deposited in the "state board of psychological examiners' account" within the state general fund: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

Each member of the board shall receive the sum of twenty-five dollars for each day actually attending to the work of the board or any of its committees and for the time spent in necessary travel; and in addition thereto shall be reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Any such expenses shall be paid from the "state board of psychological examiners' account" within the general fund, to the extent that the moneys are available therein. [1975-'76 2nd ex.s. c 34 § 48; 1969 ex.s. c 199 § 19; 1965 c 70 § 21.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.83.060 Application for license—Fee.** Each applicant for a license shall file with the director an application duly verified, in such form and setting forth such information as the board shall prescribe. An application fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended shall accompany each application. [1975 1st ex.s. c 30 § 72; 1965 c 70 § 6; 1955 c 305 § 6.]

**18.83.070 Applicants—Qualifications—Examination.** An applicant for a license as "psychologist" must submit proof to the board that:

- (1) He is of good moral character.
- (2) He holds a doctoral degree from an accredited institution of higher learning with an adequate major in psychology as determined by the board and has had at least one year experience practicing psychology under qualified supervision after receiving such degree.
- (3) He is professionally competent by passing an examination in psychology prescribed by the board and covering the basic subject matter of psychology and psychological skills and techniques: *Provided*, That persons who have not previously failed an examination hereunder or been denied a certificate by the board and who are holding a doctoral or master's degree from an accredited institution of higher learning with an adequate major in psychology as determined by the board and who have practiced psychology for a period of five years or its equivalent in part time employment, at least three years of which shall have been in the state of Washington prior to the date of application and who submit to the board proof of good moral character shall be granted the title of "psychologist" and shall receive a license hereunder without taking any examination, if such persons apply for such license within one year after the effective date of this amendatory act of 1965. [1965 c 70 § 7; 1955 c 305 § 7.]

**Effective date—1965 c 70:** The effective date of 1965 c 70 is June 10, 1965.

**18.83.072 Examinations—Where held—Applicant-board conference—Reexamination.** (1) Examination of applicants shall be held in Olympia, Washington, or at such other place as designated by the director, at least annually at such times as the board may determine.

(2) Any applicant shall have the right to discuss with the board his performance on the examination.

(3) Any applicant who fails to make a passing grade on the examination may be allowed to take the examination a second time. Any applicant who fails the examination a second time must obtain special permission from the board to take the examination again.

(4) The reexamination fee shall be the same as the application fee set forth in RCW 18.83.060. [1971 ex.s. c 266 § 15; 1965 c 70 § 20.]

**18.83.080 Licenses—Issuance—Display.** Upon forwarding to the director by the board of the name of each applicant entitled to a license under this chapter, the director shall promptly issue to such applicant a license authorizing such applicant to use the title "psychologist" for a period of one year. Said license shall be

in such form as the director shall determine. Each licensed psychologist shall keep his license displayed in a conspicuous place in his principal place of business. [1965 c 70 § 8; 1955 c 305 § 8.]

**18.83.082 Licenses—Issue to "certified psychologists"—Temporary permits.** (1) All "certified psychologists" who are certified under the provisions of chapter 18.83 RCW shall be promptly issued a license by the director. The fee for this license shall be determined by the director as provided in RCW 43.24.085 as now or hereafter amended.

(2) The words "certification" and "licensing" shall be known as interchangeable terms in this chapter.

(3) A valid receipt for an initial application for license hereunder, provided the applicant meets the requirements of subsections (1) and (2) of RCW 18.83.070, shall constitute a temporary permit to practice psychology until the board of examiners completes action on the application. The board must complete action within one year of the date such receipt is issued.

(4) A person, not licensed in this state, who wishes to perform practices under the provisions of this chapter for a period not to exceed ninety days within a calendar year, must petition the board for a temporary permit to perform such practices. If the person is licensed or certified in another state deemed by the board to have standards equivalent to this chapter, a permit may be issued. No fee shall be charged for such temporary permit. [1975 1st ex.s. c 30 § 73; 1965 c 70 § 23.]

**18.83.090 Licenses—Renewal—Fee.** Each licensed psychologist shall renew his license by paying to the state treasurer, on or before the tenth day of January of each year, a renewal fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. Upon receipt of such payment by the state treasurer the director shall issue a certificate of renewal in such form as the director shall determine. [1975 1st ex.s. c 30 § 74; 1971 ex.s. c 266 § 16; 1965 c 70 § 9; 1955 c 305 § 9.]

**18.83.100 Licenses—Failure to renew.** Failure to renew a license as herein provided shall suspend such license: *Provided*, That a license holder whose license has been suspended for failure to renew may reinstate such license by paying to the state treasurer the renewal fees for all of the years in which such failure occurred, together with a renewal fee for the current year, but not to exceed five years. However, no renewal license shall be issued after one year from the expiration of the last valid license unless the board shall find that the applicant has not violated any provision of this chapter since his license was suspended. [1965 c 70 § 10; 1955 c 305 § 10.]

**18.83.105 Certificates of qualification.** The board may issue certificates of qualification with appropriate title to applicants who meet all the licensing requirements except the possession of the degree of Doctor of Philosophy or its equivalent in psychology from an accredited educational institution. These certificates of

qualification certify that the holder has been examined by the board and is deemed competent to perform certain functions within the practice of psychology under the periodic direct supervision of a psychologist licensed by the board. Such functions will be specified on the certificate issued by the board. Such applicant shall pay to the board of examiners a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended for certification in a single area of qualification and a fee for amendment of the certificate to include each additional area of qualification. Upon petition by a holder the board of examiners may grant authority to function without immediate supervision. [1975 1st ex.s. c 30 § 75; 1965 c 70 § 22.]

**18.83.110 Privileged communications.** Confidential communications between a client and a psychologist shall be privileged against compulsory disclosure to the same extent and subject to the same conditions as confidential communications between attorney and client. [1965 c 70 § 11; 1955 c 305 § 11.]

*Privileged communications—Physician and patient: RCW 5.60.060.*

**18.83.120 Unethical practice defined.** Within the meaning of this chapter unethical practice of psychology shall include the following:

(1) Wilfully misleading a client or furnishing a client with information known to be erroneous.

(2) The offering of any psychological services entirely by mail, the use of untrained personnel or of mechanical devices alone in the interpretation of test results, the indiscriminate dissemination of psychological testing materials.

(3) The employment of psychological techniques for entertainment, or other purposes not consistent with the development of psychology as a science.

(4) Engaging in individual psychological diagnosis or treatment in the course of public lectures or demonstrations, newspaper or magazine articles, radio or television programs, or similar media.

(5) Representing himself as a psychologist under any name, except his own, which shall be that used in his license issued by the director.

(6) Conducting an office for the practice of psychology in his name or use his name in connection with any office for the practice of psychology, unless he is personally present therein functioning as a psychologist or personally overseeing the functions performed in any office during most of the time that office is being operated.

(7) Employing a solicitor or solicitors to obtain business.

(8) Advertising individual psychological diagnosis or treatment in newspapers, periodicals, or in bold face type or in any printed matter or by the use of any form of display sign or by means of hand bills, posters, circulars, stereopticon slide, motion pictures, television, or any printed publication or medium: *Provided*, That he may be listed in any directory in a manner uniform as to type, size and color with others listed therein, may display a dignified sign at the entrance to his office or on the windows thereof, containing not more than his name, degree, the designation psychologist, and the type of

psychological activity, and may use dignified business cards containing his name, title, degree, and the type of psychological activity, office and residence address and telephone numbers and his office hours.

(9) Obtaining any fee by fraud or misrepresentation.

(10) Wilfully betraying professional secrets.

(11) Adopting any means tending to deceive the public or to be habitually intemperate or grossly immoral or to commit any offense involving moral turpitude, in which case the record of conviction thereof shall be conclusive evidence.

(12) Obtaining by fraud or deceit a license as psychologist.

(13) Advertising the rendition of individual psychological diagnosis or treatment at a stipulated price or any variation of such price or as being free.

(14) Violating the provisions of chapter 19.68 RCW.

(15) Being guilty of unprofessional conduct as defined in any other act relating to the practice of psychology.

(16) All advertising of any psychological practice which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons and so be harmful or injurious to public morals or safety.

(17) Repeating acts of immorality, or repeating acts of gross misconduct in the practice of psychology. [1965 c 70 § 12; 1955 c 305 § 13.]

**18.83.130 Denial, suspension, revocation of license.** The director shall refuse to grant a license to any applicant and shall revoke or suspend any license upon proof of the following:

(1) Conviction of crime involving moral turpitude;

(2) Habitual use of narcotics, or any other substance which impairs the intellect and judgment to such an extent as to incapacitate the applicant or license holder for the practice of psychology;

(3) Habitual drunkenness;

(4) Violation of the provisions of this chapter;

(5) The unethical practice of psychology. [1965 c 70 § 13; 1955 c 305 § 12.]

*Narcotics: Chapter 69.32 RCW.*

**18.83.140 Denial, suspension, revocation of license—Hearings.** Licenses issued pursuant to this chapter may be suspended or revoked in the manner provided in RCW 43.24.110. [1965 c 70 § 14; 1955 c 305 § 14.]

**18.83.150 Denial, suspension, revocation of license—Procedure.** In all proceedings having for their purpose the revocation or suspension of a license, the holder of such license shall be given twenty days' notice in writing by the director, which notice shall specify the offense or offenses against this chapter with which said accused person is charged, and said notice shall also give the day and place where the hearing is to be held, which place of hearing shall be in the city of Olympia, Washington, unless a different place shall be fixed by the director. The director shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books or documents. The accused person shall have the opportunity to make his defense and may have

issued such subpoenas as he may desire. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath administered by the director. Testimony should be taken in writing and may be taken by deposition under such rules as the director may prescribe. The committee appointed pursuant to RCW 43.24.110, shall hear and determine the charges and shall make findings and conclusions on the evidence produced and shall file the same in the director's office, together with a transcript of all evidence, a duplicate copy of which shall be served upon the accused. The revocation or suspension of the license shall be in writing, signed by the director, stating the ground upon which such order is based. [1965 c 70 § 15; 1955 c 305 § 15.]

**18.83.160 Denial, suspension, revocation of license—Appeal.** Any person feeling himself aggrieved by the refusal of the director to issue a license as provided in this chapter, or to renew the same, or by the revocation or suspension of a license issued pursuant to the provisions of this chapter, shall have the right to appeal from such order within fifteen days after a copy of such order is served upon him to the superior court of any county, which court shall hear such matter de novo, and appeal shall lie to the supreme court or the court of appeals of the state from the judgment of the said superior court in the same manner as provided by law in other civil cases. [1971 c 81 § 61; 1965 c 70 § 16; 1955 c 305 § 16.]

**18.83.170 Reciprocity.** Upon application accompanied by a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, the board may recommend and the director shall be empowered to grant a license, without written or oral examination, to any applicant who has not previously failed any examination held by the board of psychology of the state of Washington and furnishes evidence satisfactory to the board that he:

- (1) Holds a doctoral degree with primary emphasis on psychology from an accredited college or university; and
- (2) Is licensed or certified to practice psychology in another state in which the requirements for such licensing or certification are, in the judgment of the board, essentially equivalent to those required by this chapter and the rules and regulations of the board. Such individuals must have been licensed or certified in another state for a period of at least two years; or
- (3) Is a diplomate in good standing of the American Board of Examiners in Professional Psychology. [1975 1st ex.s. c 30 § 76; 1965 c 70 § 17; 1955 c 305 § 17.]

**18.83.180 Penalties.** It shall be a misdemeanor for any person to:

- (1) Use in connection with his or her name any designation tending to imply that he or she is a licensed psychologist unless duly licensed under or specifically excluded from the provisions of this chapter;
- (2) Practice as a licensed psychologist during the time his or her license issued under the provisions of this

chapter is suspended or revoked. [1965 c 70 § 18; 1955 c 305 § 18.]

**18.83.190 Injunction.** If any person represents himself to be a psychologist, unless exempted from the provisions of this chapter without possessing a valid license, certificated qualification, or a temporary permit to do so, or if he violates any of the provisions of this chapter any prosecuting attorney, the director, or any citizen of the same county may maintain an action in the name of the state to enjoin such person from representing himself as a psychologist. The injunction shall not relieve from criminal prosecution, but the remedy by injunction shall be in addition to the liability of such offender to criminal prosecution and to suspension or revocation of his license. [1965 c 70 § 24.]

**18.83.200 Exemptions.** This chapter shall not apply to:

- (1) Any person teaching, lecturing, consulting, or engaging in research in psychology but only insofar as such activities are performed as a part of or are dependent upon a position in a college or university in the state of Washington.
- (2) Any person who holds a valid school psychologist credential from the Washington state board of education but only when such a person is practicing psychology in the course of his employment.
- (3) Any person employed by a local, state, or federal government agency whose psychologists must qualify for employment under federal or state certification or civil service regulations; but only at those times when that person is carrying out the functions of his employment.
- (4) Any person who must qualify under the employment requirements of a business or industry and who is employed by a business or industry which is not engaged in offering psychological services to the public, but only when such person is carrying out the functions of his employment: *Provided*, That no person exempt from licensing under this subsection shall engage in the clinical practice of psychology.
- (5) Any person who is a student of psychology, psychological intern, or resident in psychology preparing for the profession of psychology under supervision in a training institution or facilities and who is designated by the title such as "psychological trainee," "psychology student," which thereby indicates his training status.
- (6) Any person who has received a doctoral degree from an accredited institution of higher learning with an adequate major in sociology or social psychology as determined by the board and who has passed comprehensive examinations in the field of social psychology as part of the requirements for the doctoral degree. Such persons may use the title "social psychologist" provided that they file a statement of their education with the board. [1965 c 70 § 19.]

**18.83.210 Certain counseling or guidance not prohibited.** Nothing in this chapter shall be construed as prohibiting any individual from offering counseling or guidance provided that such individuals do not hold themselves forth as psychologists. [1965 c 70 § 25.]

**18.83.900 Severability**—1965 c 70. If any provision of this 1965 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the 1965 amendatory act, or the application of the provision to other persons or circumstances is not affected. [1965 c 70 § 26.]

### Chapter 18.85

#### REAL ESTATE BROKERS AND SALESMEN

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*Excise tax on real estate sales: Chapter 28A.45 RCW.*

*Real estate salesman or broker on commission not subject to unemployment compensation: RCW 50.04.230.*

**18.85.010 Definitions.** In this chapter words and phrases have the following meanings unless otherwise apparent from the context:

(1) "Real estate broker," or "broker," means a natural or artificial person, acting independently, who for commissions or other compensation, engages in the purchase, sale, exchange, rental, or negotiation thereof, of real estate, or interests including leases and/or options therein, and for business opportunities or interest therein, belonging to others, or sale of any interest in any formal or informal association in which the purchaser acquires use of real property unless the offering is registered with the state of Washington, or holds himself out to the public as being so engaged;

(2) "Real estate salesman" or "salesman" means any natural person who represents a real estate broker in any of his activities;

(3) An "associate real estate broker" is a person who has qualified as a "real estate broker" who works with a broker and whose license states that he is associated with a broker;

(4) The word "person" as used in this chapter shall be construed to mean and include a corporation or copartnership, except where otherwise restricted;

(5) "Business opportunity" shall mean and include business, business opportunity and good will of an existing business or any one or combination thereof;

(6) "Commission" means the real estate commission of the state of Washington;

(7) "Director" means the director of motor vehicles;

(8) "Real estate multiple listing association" means any association of real estate brokers:

(a) Whose members circulate listings of the members among themselves so that the properties described in the listings may be sold by any member for an agreed portion of the commission to be paid; and

(b) Which require in a real estate listing agreement between the seller and the broker, that the members of the real estate multiple listing association shall have the same rights as if each had executed a separate agreement with the seller.

(9) "Clock hours of instruction" means actual hours spent in classroom instruction in any tax supported, public vocational-technical institution, community college, or any other institution of higher learning or a correspondence course from any of the aforementioned institutions certified by such institution as the equivalent of the required number of clock hours, and the real estate commission may certify courses of instruction other than in the aforementioned institutions. [1973 1st ex.s. c 57 § 1; 1972 ex.s. c 139 § 1; 1969 c 78 § 1; 1953 c 235 § 1; 1951 c 222 § 1; 1943 c 118 § 1; 1941 c 252 § 2; Rem. Supp. 1943 § 8340-25. Prior: 1925 ex.s. c 129 § 4.]

**18.85.030 Employees.** The director shall appoint an adequate staff to assist him. [1972 ex.s. c 139 § 2; 1951

c 222 § 2; 1945 c 111 § 1, part; 1941 c 252 § 5, part; Rem. Supp. 1945 § 8340-28, part.]

**18.85.040 Director—General powers and duties.** The director, with the advice and approval of the commission, may issue rules and regulations to govern the activities of real estate brokers, associate real estate brokers and salesmen, consistent with this chapter, fix the times and places for holding examinations of applicants for licenses and prescribe the method of conducting them. The director shall enforce all laws, rules and regulations relating to the licensing of real estate brokers, associate real estate brokers, and salesmen, grant or deny licenses to real estate brokers, associate real estate brokers, and salesmen, hold hearings and suspend or revoke the licenses of violators and may deny, suspend or revoke the authority of a broker to act as the designated broker of persons who commit violations of the real estate license law or of the rules and regulations. The director shall institute a program of education for the benefit of the licensees. [1972 ex.s. c 139 § 3; 1953 c 235 § 2; 1951 c 222 § 3; 1941 c 252 § 4; Rem. Supp. 1941 § 8340-27. Prior: 1925 ex.s. c 129 § 2.]

**18.85.050 Director or employees shall not have interest in the business.** Neither the director nor any employees, shall be interested in any real estate business regulated by \*this 1972 amendatory act: *Provided*, That if any real estate broker, associate real estate broker, or salesman is employed by the director or by the commission as an employee, the license of such broker, associate real estate broker, or salesman shall not be revoked, suspended, or canceled by reason thereof. [1972 ex.s. c 139 § 4; 1953 c 235 § 3; 1951 c 222 § 4; 1945 c 111 § 1, part; 1941 c 252 § 5, part; Rem. Supp. 1945 § 8340-28, part.]

**\*Reviser's note:** "this 1972 amendatory act" [1972 ex.s. c 139] consists of the amendments to RCW 18.85.010, 18.85.030, 18.85.040, 18.85.050, 18.85.060, 18.85.071, 18.85.090, 18.85.100, 18.85.110, 18.85.130, 18.85.140, 18.85.150, 18.85.161, 18.85.170, 18.85.190, 18.85.210, 18.85.230, 18.85.271, 18.85.290, and to RCW 18.85.095, 18.85.155 and 18.85.920.

**18.85.060 Director's seal.** The director shall adopt a seal with the words real estate director, state of Washington, and such other device as he may approve engraved thereon, by which he shall authenticate the proceedings of his office. Copies of all records and papers in the office of the director certified to be a true copy under the hand and seal of the director shall be received in evidence in all cases equally and with like effect as the originals. The director may deputize one or more of his assistants to certify records and papers. [1972 ex.s. c 139 § 5; 1941 c 252 § 8; RRS § 8340-31. Prior: 1925 ex.s. c 129 § 7.]

**18.85.071 Real estate commission created—Qualifications, terms, appointment of members—Vacancies.** There is established the real estate commission of the state of Washington, consisting of the director of the commission and six commission members who shall act in an advisory capacity to the director.

The six commission members shall be appointed by the governor in the following manner: For a term of six years each, with the exception of the first appointees, who shall be appointed one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, one for a term of five years, and one for a term of six years, with all other subsequent appointees to be appointed for a six year term. At least two of the commission members shall be selected from the area in the state west of the Cascade mountain range and at least two shall be selected from that area of the state east of the Cascade mountain range. No commission member shall be appointed who has had less than five years experience in the sale, operation, or management of real estate in this state, or has had at least three years experience in investigative work of a similar nature, preferably in connection with the administration of real estate license law of this state or elsewhere. Any vacancies on the commission shall be filled by appointment by the governor for the unexpired term. [1972 ex.s. c 139 § 6; 1953 c 235 § 17.]

**18.85.080 Real estate commission—Compensation.** The six board members of the commission shall receive as compensation twenty-five dollars for each day actually spent on official business, plus travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended when they shall be called into session by the director or when presiding at examinations for applicants for licenses or when otherwise engaged in the business of the commission. [1975-'76 2nd ex.s. c 34 § 49; 1953 c 235 § 4; 1951 c 222 § 6; 1941 c 252 § 14; Rem. Supp. 1941 § 8340-37.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.85.085 Commission—Educational conferences—Examinations of applicants for licenses.** The commission shall have authority to hold educational conferences for the benefit of the industry, and shall conduct examinations of applicants for licenses under this chapter. It shall be charged with the preparation of such examinations and shall administer them at stated periods, with not less than three examinations per year in each of the following six areas of the state per year: Northwest Washington, southwest Washington, northeast Washington, southeast Washington, north central Washington, and south central Washington. [1953 c 235 § 18.]

**18.85.090 Real estate commission—Duties—Examination for broker's license—Qualifications of applicant.** The commission shall be responsible for the preparation of the examination to be submitted to applicants, and shall make and file with the director a list, which may be signed by a majority of the members of the commission conducting the examination, of all applicants who successfully passed the examination and of those who failed.

Any applicant who fails to pass the examination may apply again.



No applicant shall be permitted to take the examination for a real estate broker's license without first satisfying the director that he:

(1) Has had a minimum of two years of actual experience as a full time real estate salesman in this state or in another state having comparable requirements within the five years previous to applying for said examination or is, in the opinion of the director, otherwise and similarly qualified, or is otherwise qualified, by reason of practical experience in a business allied with or related to real estate;

(2) Is eighteen years of age or older;

(3) Has a high school diploma or its equivalent;

(4) Has furnished proof, as the director may require, that he has completed successfully ninety clock hours of instruction in real estate.

The requirements of subsections (1) through (4) of this section shall not apply to persons who are licensed as brokers under any real estate license law in Washington which exists prior to this law's enactment and whose license has not been subsequently revoked: *Provided*, That requirements for brokers created by \*this 1972 amendatory act shall apply to any person who is licensed as a salesman on or before the \*\*effective date of this 1972 amendatory act, if such person shall apply to become a broker or associate broker after this 1972 amendatory act is in effect. [1972 ex.s. c 139 § 8; 1953 c 235 § 5; 1951 c 222 § 7; 1941 c 252 § 15; Rem. Supp. 1941 § 8340-38.]

**Reviser's note:** \*(1) "this 1972 amendatory act", see note following RCW 18.85.050.

\*\* (2) The "effective date of this 1972 amendatory act" [1972 ex.s. c 139] is May 23, 1972.

**18.85.095 Salesmen—Minimum qualifications of applicant—Renewal.** It is hereby established that the minimum requirements for an individual to receive a salesman's license is that the individual must have obtained his eighteenth birthday and has a high school diploma or its equivalent. No licensed salesman shall have his license renewed a second time unless he furnishes proof, as the director may require, that he has successfully completed thirty clock hours of instruction in real estate courses approved by the director.

Nothing in this section of \*this 1972 amendatory act shall apply to persons who are licensed as salesmen under any real estate license law in Washington which exists prior to this law's enactment and whose license has not been subsequently revoked. [1972 ex.s. c 139 § 7.]

**\*Reviser's note:** "this 1972 amendatory act", see note following RCW 18.85.050.

**18.85.100 License required—Prerequisite to suit for commission.** It shall be unlawful for any person to act as a real estate broker, associate real estate broker, or real estate salesman without first obtaining a license therefor, and otherwise complying with the provisions of this chapter.

No suit or action shall be brought for the collection of compensation as a real estate broker, associate real estate broker, or real estate salesman, without alleging

and proving that the plaintiff was a duly licensed real estate broker, associate real estate broker, or real estate salesman prior to the time of offering to perform any such act or service or procuring any promise or contract for the payment of compensation for any such contemplated act or service. [1972 ex.s. c 139 § 9; 1951 c 222 § 8. Formerly: (i) 1941 c 252 § 6; Rem. Supp. 1941 § 8340-29. (ii) 1941 c 252 § 25; Rem. Supp. 1941 § 8340-48.]

**18.85.110 Exemptions from license requirement.** This chapter shall not apply to (1) any person who purchases property and/or a business opportunity for his own account, or who, as the owner of property, and/or a business opportunity, in any way disposes of the same; nor, (2) any duly authorized attorney in fact, or an attorney at law in the performance of his duties; nor, (3) any receiver, trustee in bankruptcy, executor, administrator, guardian, or any person acting under the order of any court, or selling under a deed of trust. [1972 ex.s. c 139 § 10; 1951 c 222 § 9; 1941 c 252 § 3; Rem. Supp. 1941 § 8340-26. Prior: 1925 ex.s. c 129 § 4.]

**18.85.120 Applications—Conditions—Fees.** Any person desiring to be a real estate broker, associate real estate broker, or real estate salesman with the exception of applicants meeting the requirements of RCW 18.85-.161, must successfully pass an examination as provided in this chapter, and shall make application to the director for a license, and upon a form to be prescribed and furnished by the director, giving his full name and business address. With this application the applicant shall:

(1) Pay an examination fee of fifteen dollars if a salesman's license is applied for and of twenty-five dollars if a broker's license is applied for, such fees to accompany the application.

(2) If the applicant is a corporation, furnish a list of its officers and directors and their addresses, and if the applicant is a copartnership, a list of the members thereof and their addresses.

(3) If the applicant is a nonresident of this state, give an irrevocable consent that suits and actions may be commenced against him in any county of this state in which the plaintiff resides, and that service of any process or pleadings may be made by delivery thereof to the director. Such service shall be held in all courts as valid and binding upon the applicant. The irrevocable consent shall be in a form prescribed by the director, acknowledged before a notary public and, if the applicant is a corporation, shall be accompanied by a certified copy of the resolution of the board of directors authorizing the execution of the same. Any process or pleading so served upon the director shall be in duplicate copies, one of which shall be filed in the office of the director, and the other immediately forwarded by registered mail to the office address of the applicant given in his application, and service shall be deemed to have been made upon the applicant on the third day following the deposit in the mail of such copy.

(4) Furnish such other proof as the director may require concerning the honesty, truthfulness, and good reputation, as well as the identity, including but not



limited to fingerprints, of any applicants for a license, or of the officers of a corporation making the application. [1973 1st ex.s. c 42 § 1; 1953 c 235 § 6; 1951 c 222 § 10. Formerly: (i) 1947 c 203 § 1, part; 1945 c 111 § 3, part; 1943 c 118 § 2, part; 1941 c 252 § 11, part; Rem. Supp. 1947 § 8340-34, part; prior: 1925 ex.s. c 129 §§ 10, 11. (ii) 1947 c 203 § 3; 1945 c 111 § 6; 1941 c 252 § 16; Rem. Supp. 1947 § 8340-39.]

**18.85.130 Examinations—Scope—Manual—Disposition of moneys from sale of manual.** The director shall provide each original applicant for a license with a manual containing a sample list of questions and answers pertaining to real estate law and the operation of the business and may provide the same at cost to any licensee or to other members of the public. The director shall ascertain by written examination, that each applicant, and in case of a corporation, or copartnership, that each officer, agent, or member thereof whom it proposes to act as licensee, has:

- (1) Appropriate knowledge of the English language, including reading, writing, spelling, and arithmetic;
- (2) An understanding of the principles of real estate conveyancing, the general purposes and legal effect of deeds, mortgages, land contracts of sale, exchanges, rental and option agreements, and leases;
- (3) An understanding of the principles of land economics and appraisals;
- (4) An understanding of the obligations between principal and agent;
- (5) An understanding of the principles of real estate practice and the canons of business ethics pertaining thereto; and,
- (6) An understanding of the provisions of this chapter.

The examination for real estate brokers shall be more exacting than that for real estate salesmen.

All moneys received for the sale of the manual to licensees and members of the public shall be placed in the real estate commission fund to be returned to the current biennium operating budget. [1972 ex.s. c 139 § 11; 1951 c 222 § 11. Formerly: 1947 c 203 § 2, part; 1945 c 111 § 4, part; 1941 c 252 § 12, part; Rem. Supp. 1947 § 8340-35, part.]

**18.85.140 License fees—Expiration—Renewal—Identification cards.** Before receiving his license every real estate broker must pay a license fee of twenty-five dollars, every associate real estate broker must pay a license fee of twenty-five dollars, and every real estate salesman must pay a license fee of fifteen dollars. Every license issued under the provisions of this chapter expires on the applicant's birthday following issuance of the license which date will henceforth be the renewal date. Licenses issued to corporations and partnerships expire December 31st, which date will henceforth be their renewal date. On or before the renewal date an annual renewal license fee in the same amount must be paid.

If the application for a renewal license is not received by the director on or before the renewal date, the renewal license fee shall be thirty-five dollars for a real estate broker and associate real estate broker and twenty

dollars for a real estate salesman. Acceptance by the director of an application for renewal after the renewal date shall not be a waiver of the delinquency.

The director shall issue to each broker, associate broker, and salesman a license and a pocket identification card in such form and size as he shall prescribe. [1972 ex.s. c 139 § 12; 1953 c 235 § 7; 1951 c 222 § 12. Formerly: (i) 1947 c 203 § 2, part; 1945 c 111 § 4, part; 1941 c 252 § 12, part; Rem. Supp. 1947 § 8340-35, part. (ii) 1947 c 203 § 1, part; 1945 c 111 § 3, part; 1943 c 118 § 2, part; 1941 c 252 § 11, part; Rem. Supp. 1947 § 8340-34, part; prior: 1925 ex.s. c 129 §§ 10, 11.]

**18.85.150 Temporary permits.** The director may issue a temporary salesman's permit pending examination, to any applicant who, in his opinion, is qualified, except for the examination provided for in this chapter, when a satisfactory credit and character report shall have been made by the employing broker upon a form to be supplied by the director, with full responsibility for such temporary salesmen to rest with the employing broker, no temporary permit thus granted to be transferable from the originating broker to any other broker. The application fee for such temporary permit shall be five dollars which shall not be refunded for any cause, nor shall such application fee be considered any part of any license or examination fee. The examination fee for an applicant for a temporary permit shall be fifteen dollars, no part of which shall be refunded for any cause. Such temporary permit shall be valid only until the results of the next examination for licenses are available which in no event shall be longer than six months. The director, however, shall not require any such applicant to take such examination until at least sixty days have elapsed after the issuance of the temporary permit. Only one temporary permit shall be issued to any one person. No person issued a temporary permit who fails to take or pass the examination shall be entitled to have returned any fees previously paid. Failure to take the examination next following the sixty day period after issuance of the temporary permit shall cause forfeiture of the temporary permit and of any and all fees paid.

The holder of a temporary permit is required to obtain thirty hours of instruction in real estate within seventy days after his temporary permit is issued. Such instruction may be furnished by his broker or personnel in the office he is licensed to, any prelicense school, community college or other institution providing education. The employing broker and such temporary permit holder shall certify the completion of such instruction within five days thereafter upon forms provided by the director: *Provided*, That failure to make such certification or falsification thereof shall be ground for disciplinary action under \*this 1972 amendatory act.

A temporary broker's permit may, in the discretion of the director, be issued to the legally accredited representative of a deceased broker, the senior qualified salesman in that office or other qualified representative of the deceased, which shall be valid for a period not exceeding four months and in the case of a partnership or a corporation, the same rule shall prevail in the selection of a person to whom a temporary broker's permit may be

issued. [1972 ex.s. c 139 § 13; 1953 c 235 § 8; 1951 c 222 § 13. Prior: (i) 1947 c 203 § 2, part; 1945 c 111 § 4, part; 1941 c 252 § 12, part; Rem. Supp. 1947 § 8340-35, part. (ii) 1947 c 203 § 1, part; 1945 c 111 § 3, part; 1943 c 118 § 2, part; 1941 c 252 § 11, part; Rem. Supp. 1947 § 8340-34, part; prior: 1925 ex.s. c 129 §§ 10, 11.]

\*Reviser's note: "this 1972 amendatory act", see note following RCW 18.85.050.

**18.85.155 Responsibility for conduct of salesman, associate broker or branch manager.** Responsibility for any salesman, associate broker or branch manager in conduct covered by \*this 1972 amendatory act shall rest with the broker to which such licensees shall be licensed.

In addition to the broker, a branch manager shall bear responsibility for salesmen and associate brokers operating under the branch manager at a branch office. [1972 ex.s. c 139 § 14.]

\*Reviser's note: "this 1972 amendatory act", see note following RCW 18.85.050.

**18.85.161 Nonresident brokers, salesmen—**  
**Licensing—Requirements—Reciprocity.** A nonresident broker may apply for and be issued a nonresident broker's license upon compliance with all of the provisions of this chapter. He shall not be required to maintain a definite place of business within this state, but shall retain in this state all funds arising from transactions within this state, until such funds are distributed to the proper parties involved, and he shall be subject to the requirements of this chapter relating to the handling and depositing of closing funds.

Any privileges accorded herein to a nonresident shall apply only to a licensed real estate broker of two years' experience or more and only so long as the broker shall (1) maintain an active place of business within the state of his domicile, and (2) maintain his license in good standing in the state of his domicile: *Provided*, That such nonresident is domiciled in a state which extends similar recognition and courtesies to licensed real estate brokers of this state. When any broker moves into this state from a state having similar reciprocal laws and desires a license, and if such broker has maintained a license in his home state in good standing prior to his moving into this state, he shall, in the discretion of the director, not be required to take the state examination for a license.

The director may waive the requirement of examination of any applicant for a license in the case of an application from a nonresident who is licensed in a state having similar requirements, under the laws of which, similar recognition and courtesies are extended to licensees of this state by mutual written agreement of the directors and commissions of the concerned states.

Salesmen employed by a nonresident broker who has been issued a nonresident broker's license may operate for such broker in this state upon payment of the license fee required of salesmen during such time as they continue licensed under the nonresident broker in this state and if such salesman maintains a license in good standing under his broker in his home state. [1972 ex.s. c 139 § 15; 1953 c 235 § 9; 1951 c 222 § 21.]

**18.85.163 Nonresident brokers—Regulatory provisions apply.** The regulatory provisions of this chapter shall apply to all nonresident brokers acting within this state. [1951 c 222 § 22.]

**18.85.170 Licenses—Restrictions as to use—**  
**Exceptions.** No license issued under the provisions of this chapter shall authorize any person other than the person to whom it is issued to do any act by virtue thereof nor to operate in any other manner than under his own name except:

(1) When a license is issued to a corporation it shall entitle one officer thereof, to be named by the corporation in its application, who shall qualify the same as any other agent, to act as a real estate broker on behalf of said corporation, without the payment of additional fees;

(2) When a license is issued to a copartnership it shall entitle one member thereof to be named in the application, who shall qualify to act as a real estate broker on behalf of the copartnership, without the payment of additional license fees;

(3) A licensed broker, associate broker, or salesman may operate and/or advertise under a name other than the one under which the license is issued by obtaining the written consent of the director to do so;

(4) A broker may establish one or more branch offices under a name or names different from that of the main office if the name or names are approved by the director, so long as each branch office is clearly identified as a branch or division of the main office. No broker may establish branch offices under more than three names. Both the name of the branch office and of the main office must clearly appear on the sign identifying the office, if any, and in any advertisement or on any letterhead of any stationery or any forms, or signs used by the real estate firm on which either the name of the main or branch offices appears. [1972 ex.s. c 139 § 16; 1951 c 222 § 14; 1945 c 111 § 2; 1941 c 252 § 10; Rem. Supp. 1945 § 8340-33. Prior: 1925 ex.s. c 129 § 9.]

**18.85.180 Licenses—Office required—Display of license.** Every licensed real estate broker must have and maintain an office in this state accessible to the public which shall serve as his office for the transaction of business. Any office so established must comply with the zoning requirements of city or county ordinances and the broker's license must be prominently displayed therein. [1957 c 52 § 41; 1951 c 222 § 15. Prior: 1947 c 203 § 4, part; 1945 c 111 § 7, part; 1943 c 118 § 4, part; 1941 c 252 § 18, part; Rem. Supp. 1947 § 8340-41, part; prior: 1925 ex.s. c 129 § 12, part.]

**18.85.190 Licenses—Branch office.** A real estate broker may apply to the director for authority to establish one or more branch offices under the same name as the main office upon the payment of five dollars for each branch office. The director shall issue a duplicate license for each of the branch offices showing the location of the main office and the particular branch. Each duplicate license shall be prominently displayed in the office for which it is issued. Each branch office shall be required to have a branch manager who shall be an associate broker

authorized by the designated broker to perform the duties of a branch manager.

A branch office license shall not be required where real estate sales activity is conducted on and, limited to a particular subdivision or tract, if a licensed office or branch office is located within thirty-five miles of the subdivision or tract. A real estate broker shall apply for a branch office license if real estate sales activity on the particular subdivision or tract is five days or more per week. [1972 ex.s. c 139 § 17; 1957 c 52 § 42. Prior: 1947 c 203 § 4, part; 1945 c 111 § 7, part; 1943 c 118 § 4, part; 1941 c 252 § 18, part; Rem. Supp. 1947 § 8340-41, part; prior: 1925 ex.s. c 129 § 12, part.]

**18.85.200 Licenses—Change of location.** Notice in writing shall be given to the director of any change by a real estate broker, associate broker, or salesmen of his business location or of any branch office. Upon the surrender of the original license for the business or the duplicate license applicable to a branch office, and a payment of a fee of five dollars, the director shall issue a new license or duplicate license, as the case may be, covering the new location. [1971 ex.s. c 266 § 17; 1957 c 52 § 43. Prior: 1947 c 203 § 4, part; 1945 c 111 § 7, part; 1943 c 118 § 4, part; 1941 c 252 § 18, part; Rem. Supp. 1947 § 8340-41, part; prior: 1925 ex.s. c 129 § 12, part.]

**18.85.210 Licenses—Annual list—Compilation—Distribution.** The director may publish annually a list of names and addresses of brokers and salesmen licensed under the provisions hereof, together with a copy of this chapter and such information relative to the enforcement of the provisions hereof as he may deem of interest to the public; and he may mail one copy thereof to each licensed broker. [1972 ex.s. c 139 § 18; 1953 c 235 § 10; 1947 c 203 § 8; 1941 c 252 § 27; Rem. Supp. 1947 § 8340-50. Prior: 1925 ex.s. c 129 § 22.]

**18.85.220 License fees—Disposition—Real estate commission fund.** All fees required under the provisions of this chapter shall be paid to the state treasurer. The sum of five dollars from each license fee and each renewal fee received from a broker, associate broker, or salesman, shall be placed in the general fund. The balance of such fees and all other fees paid under the provisions of this chapter shall be placed in a special fund to be designated the real estate commission fund, one-half of which may be held and used for the sole purpose of inspecting the books, records and operations of the brokers, associate brokers, and salesmen. [1967 c 22 § 1; 1953 c 235 § 11; 1941 c 252 § 7; Rem. Supp. 1941 § 8340-30.]

*Real estate commission fund transferred to real estate commission account in state general fund: RCW 43.79.330-43.79.334.*

**18.85.230 Refusal, revocation, suspension of licenses—Grounds.** The director may, upon his own motion, and shall upon verified complaint in writing by any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate broker, associate real estate broker, or real

estate salesman, regardless of whether the transaction was for his own account or in his capacity as broker, and may temporarily suspend or permanently revoke or deny the license of any holder who is guilty of:

(1) Obtaining a license by means of fraud, misrepresentation, concealment, or through the mistake or inadvertence of the director;

(2) Violating any of the provisions of this chapter or any lawful rules or regulations made by the director pursuant thereto;

(3) Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses: *Provided*, That for the purposes of this section being convicted shall include all instances in which a plea of guilty or nolo contendere is the basis for the conviction, and all proceedings in which the sentence has been deferred or suspended;

(4) Making, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication or distribution of false statements, descriptions or promises of such character as to reasonably induce any person to act thereon, if the statements, descriptions or promises purport to be made or to be performed by either the licensee or his principal and the licensee then knew or, by the exercise of reasonable care and inquiry, could have known, of the falsity of the statements, descriptions or promises;

(5) Knowingly committing, or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or device whereby any other person lawfully relies upon the word, representation or conduct of the licensee;

(6) Accepting the services of, or continuing in a representative capacity, any salesman who has not been granted a license, or after his license has been revoked or during a suspension thereof;

(7) Conversion of any money, contract, deed, note, mortgage, or abstract or other evidence of title, to his own use or to the use of his principal or of any other person, when delivered to him in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return any money or contract, deed, note, mortgage, abstract or other evidence of title within thirty days after the owner thereof is entitled thereto, and makes demand therefor, shall be prima facie evidence of such conversion;

(8) Failing, upon demand, to disclose any information within his knowledge to, or to produce any document, book or record in his possession for inspection of the director or his authorized representatives acting by authority of law;

(9) Continuing to sell any real estate, or operating according to a plan of selling, whereby the interests of the public are endangered, after the director has, by order in writing, stated objections thereto;

(10) Committing any act of fraudulent or dishonest dealing or a crime involving moral turpitude, and a certified copy of the final holding of any court of competent

jurisdiction in such matter shall be conclusive evidence in any hearing under this chapter;

(11) Advertising in any manner without affixing the broker's name as licensed, and in the case of a salesman or associate broker, without affixing the name of the broker as licensed for whom or under whom the salesman or associate broker operates, to the advertisement;

(12) Accepting other than cash or its equivalent as earnest money unless that fact is communicated to the owner prior to his acceptance of the offer to purchase, and such fact is shown in the earnest money receipt;

(13) Charging or accepting compensation from more than one party in any one transaction without first making full disclosure of all the facts to all the parties interested in the transaction;

(14) Accepting, taking or charging any undisclosed commission, rebate or direct profit on expenditures made for the principal;

(15) Accepting employment or compensation for appraisal of real property contingent upon reporting a predetermined value;

(16) Issuing an appraisal report on any real property in which the broker or salesman has an interest unless his interest is clearly stated in the appraisal report;

(17) Misrepresentation of his membership in any state or national real estate association;

(18) Discrimination against any person in hiring or in sales activity, on the basis of race, color, creed or national origin, or violating any of the provisions of any state or federal antidiscrimination law;

(19) Failing to keep an escrow or trustee account of funds deposited with him relating to a real estate transaction, for a period of three years, showing to whom paid, and such other pertinent information as the director may require, such records to be available to the director, or his representatives, on demand, or upon written notice given to the bank;

(20) Failing to preserve for three years following its consummation records relating to any real estate transaction;

(21) Failing to furnish a copy of any listing, sale, lease or other contract relevant to a real estate transaction to all signatories thereof at the time of execution;

(22) Acceptance by a salesman, associate broker or branch manager of a commission or any valuable consideration for the performance of any acts specified in \*this 1972 amendatory act, from any person, except the licensed real estate broker with whom he is licensed;

(23) To direct any transaction involving his principal, to any lending institution for financing or to any escrow company, in expectation of receiving a kickback or rebate therefrom, without first disclosing such expectation to his principal;

(24) Failing to disclose to an owner his intention or true position if he directly or indirectly through third party, purchases for himself or acquires or intends to acquire any interest in, or any option to purchase, property;

(25) In the case of a broker licensee, failing to exercise adequate supervision over the activities of his licensed associate brokers and salesmen within the scope of \*this 1972 amendatory act;

(26) Any conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness or incompetency. [1972 ex.s. c 139 § 19; 1967 c 22 § 3; 1953 c 235 § 12; 1951 c 222 § 16; 1947 c 203 § 5; 1945 c 111 § 8; 1943 c 118 § 5; 1941 c 252 § 19; Rem. Supp. 1947 § 8340-42. Prior: 1925 ex.s. c 129 § 13.]

\*Reviser's note: "this 1972 amendatory act", see note following RCW 18.85.050.

*Embezzlement: Chapter 9A.56 RCW.*

*False advertising: Chapter 9.04 RCW.*

*Obstructing justice: Chapter 9A.72 RCW.*

**18.85.240 Refusal, revocation, suspension of licenses—Director's delegation of authority.** The director may deputize one or more of his assistants to perform his duties with reference to refusal, revocation or suspension of licenses, including the power to preside at hearings and to render decisions therein subject to the approval of the director. [1957 c 52 § 45. Prior: 1945 c 111 § 9, part; 1941 c 252 § 20, part; 1925 ex.s. c 129 § 14, part; Rem. Supp. 1945 § 8340-43, part.]

**18.85.251 Refusal, revocation, suspension of licenses—Procedure—Investigation—Hearing.**

The proceedings for revocation or suspension of a license or refusal to renew a license or accept an application for renewal shall be had on motion of the director or after a statement in writing verified by some person or persons familiar with the facts upon which the proposed revocation, suspension or refusal is based has been filed with the director. Upon receipt of such statement or accusation, the director shall make a preliminary investigation of the facts charged to determine whether the statement or accusation is sufficient. If the director shall determine the statement or accusation is sufficient to require formal action, the director shall thereupon set the matter for hearing at a specified time and place. A copy of such order setting time and place and a copy of the verified statement shall be served upon the licensee involved not less than twenty days before the day appointed in the order for said hearing. The department of licenses, the licensee accused, and the person making the accusation may be represented by counsel at such a hearing. The director or his authorized representative shall hear and receive pertinent evidence and testimony. [1951 c 222 § 23.]

**18.85.261 Refusal, revocation, suspension of licenses—Hearing—Conduct of.**

If the licensed person accused does not appear at the time and place appointed for the hearing in person or by counsel, the hearing officer may proceed and determine the facts of the accusation in his absence. The proceedings may be conducted at places within the state convenient to all persons concerned as determined by the director, and may be adjourned from day to day or for longer periods. The hearing officer shall cause a transcript of all such proceedings to be kept by a reporter and shall upon request after completion thereof, furnish a copy of such transcript to the licensed person accused in such proceedings at the expense of the licensee. The hearing officer shall certify the transcript of proceedings to be true

and correct. If the director finds that the statement or accusation is not proved by a fair preponderance of evidence, the director shall notify the licensee and the person making the accusation and shall dismiss the case. [1951 c 222 § 24.]

**18.85.271 Refusal, revocation, suspension of licenses—Order—Judicial review.** If the director shall decide, after such hearing, that the evidence supports the accusation by a preponderance of evidence, he may revoke the license in question or withhold renewal of any such license or suspend any such license. In such event he shall enter an order to that effect and shall file the same in his office and immediately mail a copy thereof to the affected party at the address of record with the department. Such order shall not be operative for a period of ten days from the date thereof. Any licensee or applicant aggrieved by a final decision by the director in a contested case whether such decision is affirmative or negative in form, is entitled to a judicial review in the superior court under the provisions of the Administrative Procedure Act, chapter 34.04 RCW. Upon instituting appeal in the superior court, the appellant shall give a cash bond to the state of Washington, which bond shall be filed with the clerk of the court, in the sum of five hundred dollars to be approved by the judge of said court, conditioned to pay all costs that may be awarded against such appellant in the event of an adverse decision, such bond and notice to be filed within thirty days from the date of the director's decision. [1972 ex.s. c 139 § 20; 1951 c 222 § 25.]

**18.85.281 Appeal—As stay of order—Transcript.** The filing of such notice and bond shall supersede the order of the director until the final determination of such appeal. The director shall prepare at appellant's expense and shall certify a transcript of the whole record to the director's office of all matters involved in the appeal, which shall be thereupon delivered by the director to the court in which the appeal is pending. The appellant shall be notified of the filing of the transcript and the cost thereof and shall within fifteen days thereafter pay the cost of said transcript. If the cost is not paid in full within fifteen days the appeal shall be dismissed. [1951 c 222 § 26.]

**18.85.290 Failure to perfect appeal or pay expenses terminates stay of proceedings—Further appeal.** If said appellant shall fail to perfect his appeal or fail to pay the expense of preparing the transcript as provided herein, said stay of proceedings shall automatically terminate.

An aggrieved party may secure review of a final judgment of the superior court under \*this 1972 amendatory act by appeal therefrom. Such appeal shall be taken in the manner provided by law for appeals from the superior court in other civil cases. [1972 ex.s. c 139 § 21; 1971 c 81 c 62; 1957 c 52 § 46; 1951 c 222 § 17. Prior: 1945 c 111 § 9, part; 1941 c 252 § 20, part; Rem. Supp. 1945 § 8340-43, part; prior: 1925 ex.s. c 129 § 14, part.]

\*Reviser's note: "this 1972 amendatory act", see note following RCW 18.85.050.

**18.85.300 Bonds—Remedy upon—Limit of liability.** Every bond given under the provisions of this chapter, after approval by the director, shall be filed in his office. Any person who may be damaged by the wrongful conversion of trust funds by any real estate broker, associate real estate broker, or real estate salesman, shall, in addition to other legal remedies, have a right of action on such bond for all damages not exceeding five thousand dollars against a broker or one thousand dollars against a salesman. The aggregate liability of the surety upon the bond of any real estate broker, associate real estate broker, or real estate salesman for all claims which may arise thereunder shall not exceed the sum specified therein. [1951 c 222 § 18; 1943 c 118 § 3; 1941 c 252 § 17; Rem. Supp. 1943 § 8340-40. Prior: 1925 ex.s. c 129 § 11.]

*Embezzlement: Chapter 9A.56 RCW.*

**18.85.310 Broker's records—Delivery of copies—Separate funds.** Every licensed real estate broker shall keep adequate records of all real estate transactions handled by or through him. The records shall include, but are not limited to, a copy of the earnest money receipt, and an itemization of the broker's receipts and disbursements with each transaction. These records and all other records hereinafter specified shall be open to inspection by the director or his authorized representatives.

Every real estate broker shall also deliver or cause to be delivered to all parties signing the same, at the time of signing, conformed copies of all earnest money receipts, listing agreements and all other like or similar instruments signed by the parties, including the closing statement.

Every real estate broker shall also keep separate real estate fund accounts in a recognized Washington state depository authorized to receive funds in which shall be kept separate and apart and physically segregated from licensee broker's own funds, all funds or moneys of clients which are being held by such licensee broker pending the closing of a real estate sale or transaction, or which have been collected for said client and are being held for disbursement for or to said client and such funds shall be deposited not later than the first banking day following receipt thereof.

Any violation by a real estate broker of any of the provisions of this section, or RCW 18.85.230, shall be grounds for revocation of the licenses issued to the broker. [1957 c 52 § 44; 1953 c 235 § 13; 1951 c 222 § 19. Prior: 1947 c 203 § 4, part; 1945 c 111 § 7, part; 1943 c 118 § 4, part; 1941 c 252 § 18, part; Rem. Supp. 1947 § 8340-41, part; prior: 1925 ex.s. c 129 § 12, part.]

**18.85.320 Salesmen, associate brokers—Termination of services.** The license of a real estate salesman or associate real estate broker shall be retained at all times by his designated broker and when any real estate salesman or associate real estate broker ceases to represent his broker his license shall cease to be in force. Notice of such termination shall be given by the broker to the director and such notice shall be accompanied by and include the surrender of the salesman's or associate real

estate broker's license. Failure of any broker to promptly notify the director of such salesman's or associate real estate broker's termination after demand by the affected salesman or associate real estate broker shall work a forfeiture of the broker's license. Upon application of the salesman or associate real estate broker and the payment of five dollars, the director shall issue a new license for the unexpired term, if such salesman or associate real estate broker is otherwise entitled thereto. When a real estate salesman's or associate real estate broker's services shall be terminated by his broker for a violation of any of the provisions of RCW 18.85.230, a written statement of the facts in reference thereto shall be filed forthwith with the director by the broker. [1953 c 235 § 14; 1947 c 203 § 7; 1943 c 118 § 7; 1941 c 252 § 26; Rem. Supp. 1947 § 8340-49. Prior: 1925 ex.s. c 129 § 21.]

**18.85.330 Sharing commissions.** It shall be unlawful for any licensed broker to pay any part of his commission or other compensation to any person who is not a licensed real estate broker in any state of the United States or its possessions or any province of the Dominion of Canada, or to a real estate salesman not licensed to do business for such broker; or for any licensed salesman to pay any part of his commission or other compensation to any person, whether licensed or not, except through his broker. [1953 c 235 § 15; 1943 c 118 § 6; 1941 c 252 § 24; Rem. Supp. 1943 § 8340-47.]

**18.85.340 Violations—Penalty.** Any person acting as a real estate broker, associate real estate broker, or real estate salesman, without a license, or violating any of the provisions of this chapter, shall be guilty of a gross misdemeanor. [1951 c 222 § 20; 1941 c 252 § 23; Rem. Supp. 1941 § 8340-46. Prior: 1925 ex.s. c 129 § 17.]

**18.85.345 Attorney general as legal advisor.** The attorney general shall render to the director opinions upon all questions of law relating to the construction or interpretation of this chapter, or arising in the administration thereof, that may be submitted to him by the director, and shall act as attorney for the director in all actions and proceedings brought by or against him under or pursuant to any provisions of this chapter. [1941 c 252 § 9; Rem. Supp. 1941 § 8340-32. Prior: 1925 ex.s. c 129 § 8.]

**18.85.350 Enforcement provisions.** The director may prefer a complaint for violation of any section of this chapter before any court of competent jurisdiction.

The prosecuting attorney of each county shall prosecute any violation of the provisions of this chapter which occurs in his county, and if the prosecuting attorney fails to act, the director may request the attorney general to take action in lieu of the prosecuting attorney.

Process issued by the director shall extend to all parts of the state, and may be served by any person authorized to serve process of courts of record, or may be mailed by registered mail to the licensee's last business address of record in the office of the director.

Whenever the director believes from evidence satisfactory to him that any person has violated any of the provisions of this chapter, or any order, license, decision, demand or requirement, or any part or provision thereof, he may bring an action, in the superior court in the county wherein such person resides, against such person to enjoin any such person from continuing such violation or engaging therein or doing any act or acts in furtherance thereof. In this action an order or judgment may be entered awarding such preliminary or final injunction as may be proper.

The director may petition the superior court in any county in this state for the immediate appointment of a receiver to take over, operate or close any real estate office in this state which is found, upon inspection of its books and records to be operating in violation of the provisions of this chapter, pending a hearing as herein provided. [1967 c 22 § 2; 1957 c 52 § 48; 1953 c 235 § 16. Prior: (i) 1941 c 252 § 21, part; Rem. Supp. 1941 § 8340-44, part. (ii) 1947 c 203 § 6; 1941 c 252 § 22; Rem. Supp. 1947 § 8340-45.]

**18.85.360 Witnesses—Depositions—Fees—Subpoenas.** The director may administer oaths; certify to all official acts; subpoena and bring before him any person in this state as a witness; compel the production of books and papers; and take the testimony of any person by deposition in the manner prescribed for procedure of the superior courts in civil cases, in any hearing in any part of the state.

Each witness, who appears by order of the director, shall receive for his attendance the fees and mileage allowed to a witness in civil cases in the superior court. Witness fees shall be paid by the party at whose request the witness is subpoenaed.

If a witness, who has not been required to attend at the request of any party, is subpoenaed by the director, his fees and mileage shall be paid from funds appropriated for the use of the real estate department in the same manner as other expenses of the department are paid. [1957 c 52 § 49. Prior: 1941 c 252 § 21, part; Rem. Supp. 1941 § 8340-44, part.]

**18.85.400 Multiple listing associations—Entrance requirements.** Each real estate multiple listing association shall submit to the real estate commission for approval or disapproval its entrance requirements. No later than sixty days after receipt of the real estate multiple listing associations entrance requirements the commission shall, with the directors approval, approve or disapprove the said entrance requirements. In no event shall the real estate commission approve any entrance requirements which shall be more restrictive on the person applying to join a real estate multiple listing association than the following:

(1) Require the applicant at the time of application and admission to be a licensed broker under chapter 18.85 RCW;

(2) Require the applicant, if all members of the real estate multiple listing association are so required, to obtain and maintain a policy of insurance, containing specified coverage within designated limits protecting



members from claims by sellers who have made keys to their premises available to members for access to their properties, against losses arising from damage to or theft of contents of such properties;

(3) Require the applicant to pay an initiation fee computed by dividing an amount equal to five times the book value of the real estate multiple listing association concerned (exclusive of any value for listings and exclusive of all investments not related to the operation of the real estate multiple listing association and exclusive of all real estate), by the number of real estate broker members of said organization: *Provided*, That in no event shall the initiation fee exceed twenty-five hundred dollars;

(4) Require the applicant for membership to have been:

(a) A broker in the territory of the real estate multiple listing association for a period of one year; or

(b) An associate broker with one year's experience in the area of the real estate multiple listing association, who in addition has had one year's experience as a broker in any other area of the state.

(5) Require the applicant to follow any other rules of the association which apply to all the members of such association: *Provided*, That such other rules do not violate federal or state law: *Provided*, That nothing in \*this 1969 amendatory act shall be construed to limit the authority of any real estate multiple listing association to engage in any activities which are not otherwise prohibited by law. [1969 c 78 § 2.]

\*Reviser's note: "this 1969 amendatory act" consists of this section and the 1969 amendment to RCW 18.85.010.

**18.85.410 Sale of used mobile homes by licensees.** (1) Any person licensed under the provisions of this chapter may sell a used mobile home as defined in \*RCW 84.36.370 without obtaining a license required by chapter 46.70 RCW: *Provided*, That the mobile home is no longer subject to chapter 46.12 RCW and the title has been turned in to the department of motor vehicles with a written statement from the county assessor of the county in which the mobile home is located, that said mobile home is no longer personal property and has been assessed as real property for a period of at least one year: *And provided further*, That the mobile home is sold in one transaction with the land on which it rests.

(2) In order to carry out the provisions of this section, the director of the department of motor vehicles shall prescribe by rule or regulation methods and procedures to assure compliance with the requirements of Title 46 RCW pertaining to mobile homes, collection of taxes, and transaction documentation. [1973 1st ex.s. c 60 § 1.]

\*Reviser's note: "RCW 84.36.370" was repealed by 1974 ex.s. c 182 § 6, later enactment, see RCW 84.36.381-84.36.389.

**18.85.900 Severability—1941 c 252.** If any section, subdivision, sentence or clause in this act shall be held invalid or unconstitutional, such fact shall not affect the validity of the remaining portions of this act. [1941 c 252 § 28.]

**18.85.910 Severability—1951 c 222.** The provisions of this act are to be severable and if any section, subdivision or clause of this act shall be held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of the act. [1951 c 222 § 27.]

**18.85.920 Severability—1972 ex.s. c 139.** The provisions of this 1972 amendatory act are to be severable and if any section, subdivision, or clause of this act shall be held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of the act. [1972 ex.s. c 139 § 22.]

## Chapter 18.88 REGISTERED NURSES

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*Actions against, limitation of: RCW 4.16.350.*

*Actions for negligence against, evidence and proof required to prevail: RCW 4.24.290.*

*Crimes relating to pregnancy and childbirth: RCW 9A.32.060.*

*Employment of school nurses: RCW 28A.60.320.*

*Labor regulations, collective bargaining—Health care activities: Chapter 49.66 RCW.*

*Lien of licensed nurse for service performed: Chapter 60.44 RCW.*

*Practical nurses: Chapter 18.78 RCW.*

**18.88.010 Statement of policy.** In order to safeguard life, health and to promote public welfare, any person practicing or offering to practice nursing as a registered nurse in this state shall hereafter be required to submit



evidence that he or she is qualified so to practice, and shall be licensed as hereinafter provided. The registered nurse is directly accountable and responsible to the individual consumer for the quality of nursing care rendered. [1973 c 133 § 1; 1949 c 202 § 1; Rem. Supp. 1949 § 10173-1.]

**Severability**—1973 c 133: "If any provision of \*this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 c 133 § 31.]

\*Reviser's note: "this 1973 amendatory act" [1973 c 133] consists of RCW 18.88.300 and the 1973 c 133 amendments to RCW 18.88.010, 18.88.020, 18.88.030, 18.88.050, 18.88.060, 18.88.070, 18.88.080, 18.88.090, 18.88.100, 18.88.110, 18.88.120, 18.88.130, 18.88.140, 18.88.150, 18.88.160, 18.88.170, 18.88.180, 18.88.190, 18.88.200, 18.88.220, 18.88.230, 18.88.240, 18.88.250, 18.88.260, 18.88.265, 18.88.270, 18.88.280, 18.88.285, and 18.88.300, and to the repeal of RCW 18.88.040.

**18.88.020 Licensing required.** After the first day of July, 1949, it shall be unlawful for any person to practice or to offer to practice as a registered nurse in this state or to use any title, sign or device to indicate that such a person is practicing as a registered nurse unless such person has been duly licensed and registered under the provisions of this chapter. [1973 c 133 § 2; 1949 c 202 § 2; Rem. Supp. 1949 § 10173-2. Prior: 1909 c 41 § 1.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.030 Definitions—Construction—Exceptions.** Whenever used in this chapter, terms defined in this section shall have the meanings herein specified unless the context clearly indicates otherwise.

The practice of nursing means the performance of acts requiring substantial specialized knowledge, judgment and skill based upon the principles of the biological, physiological, behavioral and sociological sciences in either:

(1) The observation, assessment, diagnosis, care or counsel, and health teaching of the ill, injured or infirm, or in the maintenance of health or prevention of illness of others.

(2) The performance of such additional acts requiring education and training and which are recognized jointly by the medical and nursing professions as proper to be performed by nurses licensed under this chapter and which shall be authorized by the board of nursing through its rules and regulations.

(3) The administration, supervision, delegation and evaluation of nursing practice: *Provided, however,* That nothing herein shall affect the authority of any hospital, hospital district, medical clinic or office, concerning its administration and supervision.

(4) The teaching of nursing.

(5) The executing of medical regimen as prescribed by a licensed physician, osteopathic physician, dentist, or chiroprapist.

Nothing in this chapter shall be construed as prohibiting any person from practicing any profession for which a license shall have been issued under the laws of this state or specifically authorized by any other law of the state of Washington.

This chapter shall not be construed as prohibiting the nursing care of the sick, without compensation, by any unlicensed person who does not hold herself or himself out to be a registered nurse, and further, this chapter shall not be construed as prohibiting the practice of practical nursing by any practical nurse, with or without compensation in either homes or hospitals.

The word "board" means the Washington state board of nursing.

The term "department" means the department of licenses.

The word "diagnosis", in the context of nursing practice, means the identification of, and discrimination between, the person's physical and psycho-social signs and symptoms which are essential to effective execution and management of the nursing care regimen.

The term "diploma" means written official verification of completion of an approved nursing education program.

The term "director" means the director of licenses.

The terms "nurse" or "nursing" wherever they occur in this chapter, unless otherwise specified, for the purposes of this chapter shall mean a registered nurse or registered nursing. [1973 c 133 § 3; 1961 c 288 § 1; 1949 c 202 § 4; Rem. Supp. 1949 § 10173-3. Prior: 1909 c 41 § 10.]

**Reviser's note:** The powers and duties of the director of licenses have devolved to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest.

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.050 State board of nursing—Members—Terms.** The state board of nursing, after July 1, 1973, shall consist of seven members, to be appointed by the governor, two of whom shall be appointed for a term of two years, two for a term of four years, and three for a term of five years. Thereafter all appointments shall be for terms of five years. The terms of board members in office at the time of the \*effective date of this 1973 amendatory act shall end June 30, 1973. No person shall serve as a member of the board for more than two consecutive terms.

The governor may remove any member from the board for neglect of any duty required by law, or for incompetency or unprofessional or dishonorable conduct. Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor as herein provided. [1973 c 133 § 4; 1949 c 202 § 5; Rem. Supp. 1949 § 10173-4. Prior: 1909 c 41 § 2.]

\*Reviser's note: the "effective date of this 1973 amendatory act", (1973 c 133) is June 7, 1973.

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.060 Qualifications of board members.** There shall be six nurse members and one public member on the board.

Each member of the board shall be a citizen of the United States and a resident of this state.

(1) Nurse members of the board shall be:

(a) Licensed as registered nurses under the provisions of this chapter.

(b) Have had at least five years experience in the active practice of nursing and shall have been engaged in practice within two years of appointment.

(2) The public member shall not be or have been a member of any other licensing board, nor a licensee of any health occupation board, an employee of any health facility, nor derive his primary livelihood from the provision of health services at any level of responsibility. [1973 c 133 § 5; 1961 c 288 § 3; 1949 c 202 § 6; Rem. Supp. 1949 § 10173-5. Prior: 1923 c 150 § 3; 1909 c 41 § 2.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.070 Meetings of board.** The board shall meet annually and at its annual meeting shall elect from among its members a chairman and a secretary. The board shall meet at least quarterly at times and places it designates. It shall hold such other meetings during the year as may be deemed necessary to transact its business. A majority of the board, including one officer, shall constitute a quorum at any meeting. All meetings of the board shall be open and public except the board may hold executive sessions to the extent permitted by chapter 42.30 RCW. [1973 c 133 § 6; 1949 c 202 § 7; Rem. Supp. 1949 § 10173-6. Prior: 1909 c 41 § 3.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.080 Powers of board—Compensation of members.** The board may adopt such rules and regulations not inconsistent with the law, as may be necessary to enable it to carry into effect the provisions of this chapter. The board shall approve curricula and shall establish criteria for minimum standards for schools preparing persons for licensure under this chapter. It shall keep a record of all its proceedings and make an annual report to the governor. The board shall define by regulation what constitutes specialized and advanced levels of nursing practice as recognized by the medical and nursing professions. The board may adopt regulations in response to questions put to it by professional health associations, nursing practitioners and consumers in this state concerning the authority of various categories of nursing practitioners to perform particular acts.

The board shall approve such schools of nursing as meet the requirements of this chapter and the board, and the board shall approve establishment of basic nursing education programs and shall establish criteria as to the need for and the size of a program and the type of program and the geographical location. The board shall establish criteria for proof of reasonable currency of knowledge and skill as a basis for safe practice after three years nonpracticing status. The board shall establish criteria for licensure by endorsement. The board shall examine all applications for registration under this chapter, and shall certify to the director for licensing duly qualified applicants.

The department shall furnish to the board such secretarial, clerical and other assistance as may be necessary to effectively administer the provisions of this chapter. Each member of the board shall, in addition to travel

expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended while away from home, receive twenty-five dollars compensation for each and every day engaged in the discharge of his or her duties. [1975-'76 2nd ex.s. c 34 § 50; 1973 c 133 § 7; 1961 c 288 § 4; 1949 c 202 § 8; Rem. Supp. 1949 § 10173-7. Prior: 1933 c 180 § 1; 1923 c 150 § 1; 1913 c 81 § 1; 1909 c 41 § 3.]

**Effective date**—**Severability**—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.090 Executive secretary—Assistants—Employees—Compensation, travel expenses.** The director shall appoint, after consultation with the board, an executive secretary who shall act to carry out the provisions of this chapter. The director shall also employ such assistants licensed under the provisions of this chapter as shall be necessary to carry out the provisions of this chapter. The director shall fix the compensation and provide for travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for such appointee and all such employees. [1975-'76 2nd ex.s. c 34 § 51; 1973 c 133 § 8; 1961 c 288 § 5; 1949 c 202 § 9; Rem. Supp. 1949 § 10173-8.]

**Effective date**—**Severability**—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.100 Qualifications of executive secretary.** The executive secretary shall be a graduate of an approved nursing education program and of a college and/or university, with a masters degree, and currently licensed under the provisions of this chapter; shall have a minimum of at least eight years experience in nursing in any combination of administration and nursing education; and shall have been actively engaged in practice of nursing or nursing education within two years immediately prior to the time of appointment. [1973 c 133 § 9; 1961 c 288 § 6; 1949 c 202 § 10; Rem. Supp. 1949 § 10173-8a.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.110 Approval of nursing schools.** An institution desiring to conduct a school of professional nursing shall apply to the board and submit evidence that:

(1) It is prepared to carry out the approved basic professional nursing curriculum, and

(2) It is prepared to meet other standards established by this law and by the board. Surveys of the schools and institutions and agencies to be used by the schools shall be made as determined by the board. If, in the opinion of the board, the requirements for an approved school of nursing are met, such school shall be approved. [1973 c 133 § 10; 1949 c 202 § 11; Rem. Supp. 1949 § 10173-9.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.120 Periodic survey of schools.** From time to time as deemed necessary by the board, it shall be its duty to survey all schools of nursing in the state. Written

reports of such survey shall be reviewed by the board. If the board determines that any approved school of nursing is not maintaining the standards required by the statutes and by the board, notice thereof in writing, specifying the defect or defects shall be given to the school. A school which fails to correct these conditions to the satisfaction of the board within a reasonable time shall, upon due notice to the school, be removed from the list of approved schools of nursing to be maintained by the department. [1973 c 133 § 11; 1949 c 202 § 12; Rem. Supp. 1949 § 10173-10.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.130 Qualifications of applicants for license.** An applicant for a license to practice as a registered nurse shall submit to the board (1) an attested written application on department form; (2) written official evidence of diploma from an approved school of nursing; and (3) any other official records specified by the board. The applicant at the time of such submission shall not be in violation of RCW 18.88.230 as now or hereafter amended or any other provision of this chapter.

The board, by regulation, shall establish criteria for evaluating the education of all applicants. [1973 c 133 § 12; 1961 c 288 § 7; 1949 c 202 § 13; Rem. Supp. 1949 § 10173-11. Prior: 1933 c 180 § 2; 1923 c 150 § 2; 1909 c 41 § 4.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.140 Examinations—Permits to practice.** The applicant shall be required to pass a written examination in such subjects as the board shall determine. Each written examination may be supplemented by an oral or practical examination. The board shall establish the standards for passing.

Upon approval by the board, the department shall issue an interim permit authorizing the applicant to practice nursing pending notification of the results of the first licensing examination following verification of diploma from an approved school of nursing. Upon the applicant passing the examination, the department shall issue to the applicant a license to practice as a registered nurse. If the applicant fails the examination, the interim permit expires upon notification and is not renewable. Those applicants who fail the first examination shall be allowed to submit themselves for one subsequent examination without payment of any additional fee if such examination is to be held within one year of the first failure. The board shall establish, by rule and regulation, the requirements necessary to qualify for reexamination of applicants who have failed. [1973 c 133 § 13; 1961 c 288 § 8; 1949 c 202 § 14; Rem. Supp. 1949 § 10173-12. Prior: 1933 c 180 § 2; 1923 c 150 § 2; 1909 c 41 § 4.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.150 Reciprocity.** Upon board approval of the application, the department shall issue a license to practice nursing as a registered nurse without examination to an applicant who has been duly licensed as a registered nurse by examination under the laws of another state, territory or possession of the United States.

An applicant graduated from a school of nursing outside the United States and licensed by a country outside the United States shall meet all qualifications required by this chapter and by the board and shall pass examinations as determined by the board. [1973 c 133 § 14; 1961 c 288 § 9; 1949 c 202 § 15; Rem. Supp. 1949 § 10173-13. Prior: 1909 c 41 § 9.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.160 License fee.** Each applicant for a license to practice as a registered nurse or a specialized or advanced registered nurse shall pay a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended to the state treasurer. [1975 1st ex.s. c 30 § 77; 1973 c 133 § 15; 1961 c 288 § 10; 1949 c 202 § 16; Rem. Supp. 1949 § 10173-14.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.170 Use of nomenclature.** Any person who holds a license to practice as a registered nurse in this state shall have the right to use the title "registered nurse" and the abbreviation "R.N.". No other person shall assume such title or use such abbreviation or any other words, letters, signs or figures to indicate that the person using same is a registered nurse. [1973 c 133 § 16; 1949 c 202 § 17; Rem. Supp. 1949 § 10173-15.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.180 Existing practitioners.** Any person holding a valid license to practice nursing issued by authority of the state when this chapter becomes effective shall continue to be licensed as a registered nurse under the provisions of this chapter. [1973 c 133 § 17; 1949 c 202 § 18; Rem. Supp. 1949 § 10173-16. Prior: 1909 c 41 § 5.]

**Reviser's note:** Effective date of this chapter [1949 c 202] is midnight, June 8, 1949; see preface to 1949 session laws.

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.185 Licensing of qualified but unlicensed person—Examination—Time limitation.** Any person not holding a valid license or certificate of registration to practice nursing issued by authority of the state but who is otherwise qualified and who has also practiced professional nursing in this state for at least one year within the immediate five year period prior to making application, may become licensed to practice upon making application within eighteen months after the \*effective date of this 1961 amendatory act, and upon passing an examination given by the board. [1961 c 288 § 16.]

**\*Reviser's note:** "effective date of this 1961 amendatory act" is midnight June 7, 1961; see preface to 1961 session laws.

**18.88.190 Renewal of licenses—Fee.** Every license issued under the provisions of this chapter shall be renewed, except as hereinafter provided. At least thirty days prior to expiration, the director shall mail a notice for renewal of license to every person licensed for the current licensing period. The applicant shall return the notice to the department with a renewal fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended before the expiration date. Upon

receipt of the notice and appropriate fee the department shall issue to the applicant a license which shall render the holder thereof a legal practitioner of nursing for the period stated on the license. [1975 1st ex.s. c 30 § 78; 1973 c 133 § 18; 1971 ex.s. c 266 § 18; 1961 c 288 § 11; 1949 c 202 § 19; Rem. Supp. 1949 § 10173-17. Prior: 1933 c 180 § 1; 1909 c 41 § 3.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.200 Penalty for failure to renew.** Any licensee who allows his or her license to lapse by failing to renew the license, shall upon application for renewal pay a penalty determined by the director as provided in RCW 43.24.085 as now or hereafter amended. If the applicant fails to renew the license before the end of the current licensing period, the license shall be issued for the next licensing period by the department upon written application and fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. [1975 1st ex.s. c 30 § 79; 1973 c 133 § 19; 1961 c 288 § 12; 1949 c 202 § 20; Rem. Supp. 1949 § 10173-18. Prior: 1933 c 180 § 1.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.210 Penalty for practicing during lapse of license.** Any person practicing nursing, as provided for in this chapter, during the time his or her license has lapsed, shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of this chapter. [1949 c 202 § 21; Rem. Supp. 1949 § 10173-19. Prior: 1933 c 180 § 1.]

**18.88.220 Temporary retirement—Evidence of knowledge and skill after nonpracticing status for three or more years.** A person licensed under the provisions of this chapter desiring to retire temporarily from the practice of nursing in this state shall send a written notice to the director.

Upon receipt of such notice the name of such person shall be placed upon the nonpracticing list. While remaining on this list the person shall not be subject to the payment of any renewal fees and shall not practice nursing in the state as provided in this chapter. When such person desires to resume practice, application for renewal of license shall be made to the board and renewal fee payable to the state treasurer. Persons on nonpracticing status for three years or more must provide evidence of knowledge and skill of current practice as required by the board or as hereinafter in this chapter provided. [1973 c 133 § 20; 1949 c 202 § 22; Rem. Supp. 1949 § 10173-20. Prior: 1933 c 180 § 1.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.230 Denial, revocation or suspension of license—Reissuance.** Upon recommendation of the board, the department shall deny, or after a hearing by the board, shall revoke or suspend the license upon finding that the person: (1) Procured or attempted to procure the license by fraud or deceit; or (2) has been convicted of a crime involving moral turpitude; or (3) is habitually intemperate in the use of or is addicted to any

habit forming or other dangerous drugs; or (4) has engaged in distribution of drugs for any other than legitimate purposes; or (5) exhibits behaviors which may be due to poor physical or mental health which create an undue risk that the person, as a nursing practitioner, would cause harm to other persons; or (6) has previously had a registered nursing license revoked or suspended in this or any other state, territory, possession of the United States, or country, unless reinstated; or (7) has been guilty of gross negligence in the performance of acts of nursing practice; or (8) has engaged in any act inconsistent with generally accepted professional standards of good nursing practice; or (9) has knowingly engaged in any act which, before it was committed, had been determined to be beyond the scope of that person's nursing practice by regulation under this chapter; or (10) wilfully violated any of the provisions of this chapter or regulations adopted thereunder. The department shall upon recommendation from the board reissue a license that has been revoked or suspended under the provisions of this section. Application for the reissuance of such license shall not be considered prior to one year after revocation and shall be made in such manner as the board may specify. [1973 c 133 § 21; 1949 c 202 § 23; Rem. Supp. 1949 § 10173-21. Prior: 109 c 41 § 6.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

*Habitual drug users, penalty: RCW 69.32.080.*

*Uniform controlled substances act: Chapter 69.50 RCW.*

**18.88.240 Procedure.** Any licensee shall be entitled to a hearing by the board before his or her license is revoked or suspended. In all proceedings having for their purpose a revocation or suspension of a license to practice as a registered nurse, the holder of such license shall be given twenty days' notice in writing by the director, which notice shall specify the offense or offenses against this chapter with which such accused person is charged, and shall also give the day and place where the hearing is to be held, which shall be the city of Olympia, Washington, unless a different place shall be fixed by the board. The director or the chairman of the board shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books or documents. The accused person shall have the opportunity to make his or her defense and may have issued such subpoenas as he or she may desire. Subpoenas may be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath administered by the chairman of the board. Testimony shall be taken in writing and may be taken by deposition under such rules as the board may prescribe. The board shall hear and determine the charges and shall make findings and conclusions upon the evidence produced; it shall file the same with the department, together with a transcript of all the evidence, a duplicate copy of which shall be served upon the accused. The revocation or suspension of a license to practice shall be in writing, signed by the director or chairman of the board, stating the grounds upon which such order is based. Neither the board nor any court to which an appeal may be taken shall be

bound by strict rules of procedure or by the rules of evidence in the conduct of its proceedings, but the determination shall be based upon sufficient legal evidence to sustain it. [1973 c 133 § 22; 1949 c 202 § 24; Rem. Supp. 1949 § 10173-22. Prior: 1909 c 41 § 6.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.250 Appeal**—**Administrative Procedure Act applicable.** Any person feeling aggrieved by the refusal of the department to issue any license provided for in this chapter, or to renew the same, or by the revocation or suspension of the license issued under the provisions of this chapter, or any law being administered under this chapter, shall have the right of appeal in the manner provided by the Washington Administrative Procedure Act, chapter 34.04 RCW. [1973 c 133 § 23; 1949 c 202 § 25; Rem. Supp. 1949 § 10173-23.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.260 Reports of violations**—**Investigation.** Reported violations of this chapter shall be investigated by the department or the board, as appropriate. In any case in which the department or board finds that a violation has occurred, it shall immediately report the same to the prosecuting attorney for the county in which the violation took place for prosecution or to the board for appropriate action. [1973 c 133 § 24; 1949 c 202 § 26; Rem. Supp. 1949 § 10173-24.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.265 Injunctions to prevent unauthorized practice.** The board of nursing may at its option by injunctive proceedings instituted by the attorney general, prevent the practice of nursing by any person not validly licensed. [1973 c 133 § 25; 1961 c 288 § 15.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.270 Violations**—**Penalty.** It shall be a gross misdemeanor for any person to:

(1) Sell or fraudulently obtain or furnish any nursing diploma, license, record or registration, or aid or abet therein;

(2) Practice nursing as defined by this chapter under cover of any diploma, license, record or registration illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation or mistake of fact in a material regard;

(3) Practice nursing as defined by this chapter, unless duly licensed to do so under the provisions of this chapter;

(4) Use in connection with his or her name any designation tending to imply that he or she is a registered, professional nurse unless duly licensed to practice under the provisions of this chapter;

(5) Practice as a registered nurse during the time his or her license issued under the provisions of this chapter shall be suspended or revoked; and

(6) Otherwise violate any of the provisions of this chapter. [1973 c 133 § 26; 1949 c 202 § 27; Rem. Supp. 1949 § 10173-25.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.280 Excepted activities**—**Limitation of practice.** This chapter shall not be construed as (1) prohibiting the incidental care of the sick by domestic servants or persons primarily employed as housekeepers, so long as they do not practice professional nursing within the meaning of this chapter, (2) or preventing any person from the domestic administration of family remedies or the furnishing of nursing assistance in case of emergency; (3) nor shall it be construed as prohibiting such practice of nursing by students enrolled in approved schools as may be incidental to their course of study nor shall it prohibit such students working as nursing aides; (4) nor shall it be construed as prohibiting auxiliary services provided by persons carrying out duties necessary for the support of nursing service including those duties which involve minor nursing services for persons performed in hospitals, nursing homes or elsewhere under the direction of licensed physicians or the supervision of licensed, registered nurses; (5) nor shall it be construed as prohibiting or preventing the practice of nursing in this state by any legally qualified nurse of another state or territory whose engagement requires him or her to accompany and care for a patient temporarily residing in this state during the period of one such engagement, not to exceed six months in length, if such person does not represent or hold himself or herself out as a nurse licensed to practice in this state; (6) nor shall it be construed as prohibiting nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any church by adherents thereof so long as they do not engage in the practice of nursing as defined in this chapter; (7) nor shall it be construed as prohibiting the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division or agency thereof, while in the discharge of his or her official duties; (8) permitting the measurement of the powers or range of human vision, or the determination of the accommodation and refractive state of the human eye or the scope of its functions in general, or the fitting or adaptation of lenses or frames for the aid thereof; (9) permitting the prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training or orthoptics; (10) permitting the prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the human eye; (11) prohibiting the performance of routine visual screening; (12) permitting the practice of dentistry or dental hygiene as defined in chapters 18.32 and 18.29 RCW respectively; (13) permitting the practice of chiropractic as defined in chapter 18.25 RCW including the adjustment or manipulation of the articulations of the spine; (14) permitting the practice of chiropody as defined in chapter 18.22 RCW; (15) permitting the performance of major surgery, except such minor surgery as the board may have specifically authorized by rule or regulation duly adopted in accordance with the provisions of chapter 34.04 RCW; (16) permitting the prescribing of controlled substances as defined in schedules I through IV of the Uniform Controlled Substances Act, chapter 69.50 RCW. [1973 c 133 § 27; 1961 c 288 § 13; 1949 c 202 § 28; Rem. Supp. 1949 § 10173-26.]

**Severability**—1973 c 133: See note following RCW 18.88.010.  
*Exceptions from chapter: RCW 18.88.030.*

**18.88.285 Acts which may be performed only by licensed registered nurse**—Exception. A registered nurse under her or his license may perform for compensation nursing care (as that term is usually understood) of the ill, injured or infirm, and in the course thereof, she or he is authorized to do the following things which shall not be done by any person not so licensed, except as provided in RCW 18.78.182:

(1) At or under the general direction of a licensed physician, dentist, osteopath or chiropractist (acting within the scope of his or her license) to administer medications, treatments, tests and inoculations, whether or not the severing or penetrating of tissues is involved and whether or not a degree of independent judgment and skill is required.

(2) To delegate to other persons engaged in nursing, the functions outlined in the preceding paragraph.

(3) To perform specialized and advanced levels of nursing as defined by the board.

(4) To instruct students of nursing in technical subjects pertaining to nursing.

(5) To hold herself or himself out to the public or designate herself or himself as a registered nurse or nurse. [1973 c 133 § 28; 1967 c 79 § 9; 1961 c 288 § 14.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.290 Supervised treatment authorized.** It shall not be a violation of chapter 18.71 RCW, or chapter 18.57 RCW, for a registered nurse, at or under the general direction of a licensed practitioner of medicine and surgery, osteopathy, or osteopathy and surgery (within the scope of his license), to administer prescribed drugs, injections, inoculations, tests, or treatment whether or not piercing of tissues is involved. [1955 c 62 § 1.]

**18.88.300 Rules and regulations.** The department, subject to chapter 34.04 RCW, the Washington Administrative Procedure Act may adopt such reasonable rules and regulations as may be necessary to carry out the duties herein imposed upon it in the administration of this chapter. [1973 c 133 § 29.]

**Severability**—1973 c 133: See note following RCW 18.88.010.

**18.88.900 Severability**—1949 c 202. Should any section of this chapter, or any portion of any section, be for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. [1949 c 202 § 29.]

## Chapter 18.90 SANITARIANS

### Sections

- 18.90.010 Definitions.  
 18.90.020 Board of registered sanitarians—Appointment, terms, qualifications, compensation, etc.—Examinations.  
 18.90.030 Application for registration—Qualifications—Sanitarians employed prior to 1960.

- 18.90.040 Registration, renewal fees —Sanitarians' licensing account—Expiration of certificates, delinquencies—Reexaminations.  
 18.90.050 Registration of sanitarians registered in another state—Fee.  
 18.90.060 Revocation, suspension of certificate.  
 18.90.070 Use of titles, descriptions, letters—Penalty.  
 18.90.900 Severability—1959 c 200.

### 18.90.010 Definitions. As used in this chapter:

(1) "Sanitarian" is a person who has fitted himself by suitable specialized study in the basic sciences, sanitary sciences, administration, education and the humanities and with suitable experience in the application of the principles of sanitary science to protect the public from the many health hazards resulting from an increasingly complex environment. He applies the principles of sanitary science to the investigation, evaluation and interpretation of environmental health needs in order to secure necessary sanitary improvements in environmental factors such as but not limited to milk and food, private water and sewage, vector control, refuse disposal and housing.

(2) "Board" or "examining board" means the Washington state board of registered sanitarians.

(3) "Director" means the director of licenses. [1959 c 200 § 1.]

**Reviser's note:** The powers and duties of the director of licenses have devolved to the business and professional administration within the department of motor vehicles. See note following Title 18 RCW digest.

**18.90.020 Board of registered sanitarians—Appointment, terms, qualifications, compensation, etc.—Examinations.** (1) The governor of the state of Washington shall appoint an examining board, which shall be known as the "Washington state board of registered sanitarians", consisting of three members, all of whom shall be sanitarians qualified for registration under this chapter, each of whom shall be a citizen of the United States. The initial appointments shall be made by July 1, 1959, from a list of not less than six names submitted to the governor by the Washington state association of sanitarians. The members of the first board shall serve for the following terms: One member for a period of three years, one member for a period of two years, and one member for a period of one year. Thereafter as the term of each member expires all appointments shall be for a period of three years or until their successors are appointed. These appointments shall be made from a list broadly representative of the sanitarians in the state and shall be certified to the governor by the Washington state association of sanitarians. A member of the examining board may be removed by the governor for any of the causes specified in RCW 18.90.060.

(2) The examining board shall conduct examinations in the state for the purpose of determining the qualifications of persons who apply for registration under this chapter. The board may adopt, amend or rescind such rules and regulations as it may deem necessary to carry out the provisions of this chapter.

(3) Each member of the board shall receive as compensation twenty-five dollars for each day or portion thereof in which he is actually engaged in the business



and duties of the board, and travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended incurred in the business of the board and in attending meetings thereof. [1975-'76 2nd ex.s. c 34 § 52; 1967 c 188 § 5; 1959 c 200 § 2.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.90.030 Application for registration—Qualifications—Sanitarians employed prior to 1960.** Any person may apply to the director of licenses for registration on forms provided for that purpose. The board shall carefully evaluate the evidence submitted and shall certify to the director of licenses any applicant of good moral character who meets one of the following qualifications:

(1) Graduated from a college or university recognized by the American council of education as qualified to issue a bachelor of science degree or equivalent degree, with a bachelor of science degree or equivalent degree in public health, sanitary science, bacteriology, dairy science, veterinarian medicine, engineering or a basic natural or physical science related to public health sanitation and employed full time as a sanitarian for a period of six months and passed an examination administered by the director under supervision of the board pursuant to the provisions of this chapter or the rules and regulations promulgated pursuant thereto.

(2) Is employed full time as a sanitarian in the state of Washington on January 1, 1960, and who has applied for registration on or before July 1, 1960. [1959 c 200 § 3.]

**18.90.040 Registration, renewal fees—Sanitarians' licensing account—Expiration of certificates, delinquencies—Reexaminations.** Applicants for registration shall pay a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended at the time of making application. A sanitarian registered under the provisions of this chapter shall renew his certificate by paying an annual renewal fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. All receipts realized in the administration of this chapter shall be paid into the general fund into a special account to be known as the sanitarians' licensing account. All fees shall be due and payable on or before the first day of July for the current year for which the renewal certificate shall be issued. All certificates shall expire on the renewal date unless renewed prior to such date. When such fees are not paid in full before September 1st they shall become delinquent and there shall be added to the renewal fee a penalty determined by the director as provided in RCW 43.24.085 as now or hereafter amended. Any certificate not having been renewed by October 1st of the year of expiration shall be considered lapsed. In the event an applicant shall fail to pass any examinations provided for under this chapter and the board shall grant permission for a reexamination, such applicant on reexamination shall pay an additional fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended.

[1975 1st ex.s. c 30 § 80; 1971 ex.s. c 266 § 19; 1959 c 200 § 4.]

**18.90.050 Registration of sanitarians registered in another state—Fee.** The board upon written application together with such references and proof as it may prescribe, shall certify to the director without examination any person who is registered as a sanitarian under the laws of any other state, the requirements of which for receiving such registration were at the time such registration was issued, equal to the requirements so imposed by this state for registration of sanitarians. The application fee for an applicant by reciprocity shall be determined by the director as provided in RCW 43.24.085 as now or hereafter amended. [1975 1st ex.s. c 30 § 81; 1959 c 200 § 5.]

**18.90.060 Revocation, suspension of certificate.** The director, together with a majority of the members of the board, shall have the power to revoke or suspend the certificate of registration of any registrant for unprofessional conduct or the practice of any fraud or deceit in obtaining registration, or any gross negligence, incompetency or misconduct in the practice of professional sanitation, or upon conviction of any crime involving moral turpitude: *Provided, however,* That no such revocation of certificate shall become effective until after a hearing, duly noticed, is held and the registrant given the opportunity to appear and answer the charges which have been filed against him with the board. [1959 c 200 § 6.]

**18.90.070 Use of titles, descriptions, letters—Penalty.** After July 1, 1959, no person shall use, assume or advertise in any way any title or description tending to convey the impression that he is a registered sanitarian unless he is a holder of a current certificate of registration as provided in this chapter. A holder of a current certificate of registration is entitled to append to his name the letters, "R.S.". Nothing in this section shall be construed to prevent anyone from using the title sanitarian. Any person violating the provisions of this section shall be guilty of a misdemeanor. [1959 c 200 § 7.]

**18.90.900 Severability—1959 c 200.** If any part, or parts, of this chapter shall be held unconstitutional, the remaining provisions shall be given full force and effect, as completely as if the part held unconstitutional had not been included herein. [1959 c 200 § 8.]

**Chapter 18.92  
VETERINARY MEDICINE, SURGERY AND  
DENTISTRY**

Sections	
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18.92.015	Definitions.
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18.92.235	Injunction to restrain practice without license.
18.92.240	Violations generally—Penalty.
18.92.900	Severability—1941 c 71.

*Duty of veterinary to report diseases: RCW 16.36.080.*

**18.92.010 Veterinary practice defined.** Any person shall be regarded as practicing veterinary medicine, surgery and dentistry within the meaning of this chapter who shall, within this state, (1) by advertisement, or by any notice, sign, or other indication, or by a statement written, printed or oral, in public or private, made, done, or procured by himself or herself, or any other, at his or her request, for him or her, represent, claim, announce, make known or pretend his or her ability or willingness to diagnose or prognose or treat diseases, deformities, defects, wounds, or injuries of animals; (2) or who shall so advertise, make known, represent or claim his or her ability and willingness to prescribe or administer any drug, medicine, treatment, method or practice, or to perform any operation, manipulation, or apply any apparatus or appliance for cure, amelioration, correction or reduction or modification of any animal disease, deformity, defect, wound or injury, for hire, fee, compensation, or reward, promised, offered, expected, received, or accepted directly or indirectly; (3) or who shall within this state diagnose or prognose any animal diseases, deformities, defects, wounds or injuries, for hire, fee, reward, or compensation promised, offered, expected, received, or accepted directly or indirectly; (4) or who shall within this state prescribe or administer any drug, medicine, treatment, method or practice, or perform any operation, or manipulation, or apply any apparatus or appliance for the cure, amelioration, alleviation, correction, or modification of any animal disease, deformity, defect, wound, or injury, for hire, fee, compensation, or reward, promised, offered, expected, received or accepted directly or indirectly; (5) or who performs any manual procedure for the diagnosis of pregnancy, sterility, or infertility upon livestock.

The opening of an office or place of business for the practice of veterinary medicine, the use of a sign, card, device or advertisement as a practitioner of veterinary medicine or as a person skilled in such practice shall be prima facie evidence of engaging in the practice of veterinary medicine, surgery and dentistry. [1959 c 92 § 1; 1941 c 71 § 1; Rem. Supp. 1941 § 10040-1. Prior: 1907 c 124 § 1. FORMER PART OF SECTION: 1941 c 71 § 21; Rem. Supp. 1941 § 10040-21, now codified as RCW 18.92.015.]

**18.92.015 Definitions.** The term "board" used in this chapter shall mean the Washington state veterinary board of governors; and the term "director" shall mean the director of motor vehicles of the state of Washington. "Animal technician" shall mean a person who has successfully completed a post high school course approved by the board, in consultation with the coordinating council for occupational education, in the care and treatment of animals, or a person who has had five years practical experience with a licensed veterinarian and who has successfully completed an examination administered by the board. [1974 ex.s. c 44 § 1; 1967 ex.s. c 50 § 1; 1959 c 92 § 2; 1941 c 71 § 21; Rem. Supp. 1941 § 10040-21. Formerly RCW 18.92.010, part.]

**18.92.021 Veterinary board of governors—Appointment, qualifications, terms, officers.** There is created a Washington state veterinary board of governors consisting of five members.

The members shall be appointed by the governor from a list of three or more names approved and submitted by the Washington State Veterinary Medical Association for each position to be filled. At the time of their appointment the members of the board must be actual residents of the state in active practice as licensed practitioners of veterinary medicine, surgery and dentistry and must be citizens of the United States. Not more than one member shall be from the same congressional district.

The first members of the board shall be as follows: One member for five, four, three, two and one years respectively. Thereafter the terms shall be for five years and until their successors are appointed and qualified.

A member may be appointed to serve a second term, if that term does not run consecutively. Vacancies in the board shall be filled by the governor, and the appointee to hold office for the remainder of the unexpired term.

Officers of the board shall be a chairman, who shall be the senior member, and a secretary-treasurer to be chosen by the members of the board. [1967 ex.s. c 50 § 2; 1959 c 92 § 3.]

**18.92.030 General duties of board.** It shall be the duty of the board to prepare examination questions, conduct examinations, and grade the answers of applicants. The board shall supervise the conduct of those practicing veterinary medicine, surgery and dentistry and shall make such recommendations as it deems necessary to the director in regard to the granting, suspension or revocation of licenses. It shall be the duty of the board to adopt a code of ethics for the practice of the veterinary profession in this state. The board, pursuant to chapter 34.04 RCW, shall have the power to adopt such rules and regulations as may be necessary to effectuate the purposes of \*this 1974 amendatory act including the performance of the duties and responsibilities of animal technicians: *Provided, however,* That no animal technician shall be allowed to diagnose, prognose, prescribe or perform surgery, other than inoculations, on any animal. The board shall further have the power to adopt, by reasonable rules and regulations, standards

prescribing requirements for veterinary medical facilities and to fix minimum standards of continuing veterinary medical education.

The board may employ a secretary who shall be exempt from the provisions of chapter 41.06 RCW and whose duties shall include carrying on correspondence of the board, maintaining records of board proceedings, and such other duties as may be assigned from time to time to him by the board. The department shall be the official office of record.

The board shall have the power to conduct hearings for the revocation or suspension of licenses and shall have the authority to appoint a hearing officer to conduct such hearings. [1974 ex.s. c 44 § 2; 1967 ex.s. c 50 § 3; 1961 c 157 § 2; 1959 c 92 § 4; 1941 c 71 § 4; Rem. Supp. 1941 § 10040-4. FORMER PART OF SECTION: 1941 c 71 § 9; Rem. Supp. 1941 § 10040-9 now codified as RCW 18.92.035.]

**\*Reviser's note:** "this 1974 amendatory act" [1974 ex.s. c 44] consists of amendments to RCW 18.92.015, 18.92.030, 18.92.040, 18.92.060, 18.92.070, 18.92.160 and to the addition of a new section, codified as RCW 18.92.125.

**18.92.035 Board to certify successful examinees.** The board shall certify to the director the names of all applicants who have successfully passed an examination and are entitled to a license to practice veterinary medicine, surgery and dentistry. The director shall thereupon issue a license to practice veterinary medicine, surgery and dentistry to such applicant. [1941 c 71 § 9; Rem. Supp. 1941 § 10040-9. Formerly RCW 18.92.030, part.]

**18.92.040 Compensation of board and secretary.** Each member of the board and secretary shall receive twenty-five dollars per day as compensation for each day spent upon official business of the board, and travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. No expense may be incurred by members of the board or secretary except in connection with board meetings without prior approval of the director. [1975-'76 2nd ex.s. c 34 § 53; 1974 ex.s. c 44 § 3; 1967 ex.s. c 50 § 4; 1959 c 92 § 5; 1941 c 71 § 5; 1913 c 79 § 2; 1907 c 124 § 13; Rem. Supp. 1941 § 10040-5.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.92.050 Licensing required.** It shall be unlawful for any person to practice the profession of veterinary medicine, surgery, or dentistry in this state, who shall not have complied with the provisions of this chapter. [1941 c 71 § 2; Rem. Supp. 1941 § 10040-2. Prior: 1907 c 124 § 2. FORMER PART OF SECTION: 1941 c 71 § 6, part; Rem. Supp. 1941 § 10040-6, part, now codified in RCW 18.92.070.]

**18.92.060 Licensing exemptions.** Nothing in this chapter shall be construed to apply to:

(1) Commissioned veterinarians in the United States military services, veterinarians employed by Washington state and federal agencies while performing official duties;

(2) Persons practicing veterinary medicine upon a person's own animals;

(3) A person advising with respect to or performing the castrating and dehorning of cattle, castrating and docking of sheep, castrating of swine or caponizing of poultry or artificial insemination of animals;

(4) A person who is a regularly enrolled student in a veterinary school, or regularly enrolled in a training course approved under the provisions of RCW 18.92.015 and while performing duties or actions assigned by his instructors, or working under the direct supervision of a licensed veterinarian during a school vacation period or a person performing assigned duties under supervision of a veterinarian within the established framework of an internship program recognized by the board;

(5) A veterinarian regularly licensed in another state consulting with a licensed veterinarian in this state;

(6) An animal technician acting under the supervision and control of a licensed veterinarian: *Provided, however,* That the practice of an animal technician is limited to the performance of those services which are authorized by the board;

(7) An owner being assisted in such practice by his employees when employed in the conduct of such person's business;

(8) An owner being assisted in such practice by some other person gratuitously. [1974 ex.s. c 44 § 4; 1967 ex.s. c 50 § 5; 1959 c 92 § 13; 1941 c 71 § 20; Rem. Supp. 1941 § 10040-20. Prior: 1907 c 124 § 15.]

**18.92.070 Applications—Procedure—Qualifications.** No person, unless registered or licensed to practice veterinary medicine, surgery and dentistry in this state at the time this chapter shall become operative, shall begin the practice of veterinary medicine, surgery and dentistry without first applying for and obtaining a license for such purpose from the director. In order to procure a license to practice veterinary medicine, surgery and dentistry in the state of Washington, the applicant for such license shall file his application at least thirty days prior to date of examination upon a form furnished by the director of motor vehicles, which, in addition to the fee provided by this chapter, shall be accompanied by satisfactory evidence that he is at least eighteen years of age and of good moral character, and by a diploma from some legally chartered veterinary college or veterinary department of any university or agricultural college, recognized by the American Veterinary Medical Association, evidencing the fact that the applicant has been in actual attendance at the lectures, instruction and examinations for a period of at least four academic years of thirty-two to thirty-six weeks each. Said application shall be signed by the applicant and sworn to by him before some person authorized to administer oaths. When such application and the accompanying evidence are found satisfactory, the director shall notify the applicant to appear before the board for the next examination: *Provided, however,* That the director of motor vehicles must deny the application of every applicant who has been guilty of unprofessional conduct within the two years immediately preceding date of application for license. [1974 ex.s. c 44 § 5; 1971

ex.s. c 292 § 28; 1941 c 71 § 6; Rem. Supp. 1941 § 10040-6. Formerly RCW 18.92.050, part, 18.92.070, part, and 18.92.080, part.]

**Severability**—1971 ex.s. c 292: See note following RCW 26 28.010.

**18.92.100 Examinations—Time of—Subjects—Manner.** Examinations for license to practice veterinary medicine, surgery and dentistry shall be held at least once each year at such times and places as the director may authorize and direct. Said examination, which shall be conducted in the English language shall be, in whole or in part, in writing on the following subjects: Veterinary anatomy, surgery, obstetrics, pathology, chemistry, hygiene, veterinary diagnosis, materia medica, therapeutics, parasitology, physiology, sanitary medicine, and such other subjects which are ordinarily included in the curricula of veterinary colleges, as the board may prescribe. All examinees shall be tested by written examination, supplemented by such oral interviews and practical demonstrations as the board deems necessary. The board may accept the examinee's results on the National Board of Veterinary Examiners in lieu of the written portion of the state examination. [1967 ex.s. c 50 § 6; 1959 c 92 § 7; 1941 c 71 § 7; Rem. Supp. 1941 § 10040-7.]

**18.92.115 Reexamination—Fee.** Any applicant who shall fail to secure the required grade in his first examination may take the next regular veterinary examination. The fee for reexamination shall be determined by the director as provided in RCW 43.24.085 as now or hereafter amended. [1975 1st ex.s. c 30 § 82; 1967 ex.s. c 50 § 7; 1959 c 92 § 8; 1941 c 71 § 10; Rem. Supp. 1941 § 10040-10. Prior: 1907 c 124 § 17. Formerly RCW 18.92.090, part.]

**18.92.120 License—Temporary certificates, restrictions.** Any person who shall make application for examination, as provided by RCW 18.92.070, and who has not previously failed to pass the veterinary examination, and whose application is found satisfactory by the director, may be given a temporary certificate to practice veterinary medicine, surgery and dentistry valid only until the results of the next examination for licenses are available. No more than one temporary certificate may be issued to any applicant. Such permittee shall be employed by a licensed veterinary practitioner or by the state of Washington. [1967 ex.s. c 50 § 8; 1959 c 92 § 9; 1941 c 71 § 11; 1907 c 124 § 11; Rem. Supp. 1941 § 10040-11.]

**18.92.125 Animal technicians.** Any veterinarian licensed pursuant to this chapter shall make application to the board to permit him to use the services of an animal technician. Such application shall be accompanied by an annual fee in an amount to be determined by the board, with the approval of the director, and shall set forth such information as the board may require. No veterinarian practicing in this state shall utilize the services of an animal technician without prior approval of the board. Whenever it appears to the board that an

animal technician is being utilized in a manner inconsistent with the approval granted, the board may withdraw such approval. In the event a hearing is requested upon the rejection of an application, or upon the withdrawal of an approval, a hearing shall be conducted in accordance with the procedures established under RCW 18.92.180.

No veterinarian who uses the services of an animal technician in accordance with and within the terms of any permission granted by the board shall be considered as aiding and abetting any unlicensed person to practice veterinary medicine within the meaning of RCW 18.92-.160: *Provided, however,* That any such veterinarian shall retain professional and personal responsibility for any act which constitutes the practice of veterinary medicine as defined in this chapter when performed by an animal technician in his employ. [1974 ex.s. c 44 § 6.]

**18.92.130 License—Reciprocity with other states—Fee.** Any person who has been lawfully licensed to practice veterinary medicine, surgery, and dentistry in another state or territory which has and maintains a standard for the practice of veterinary medicine, surgery and dentistry which is substantially the same as that maintained in this state, and who has been lawfully and continuously engaged in the practice of veterinary medicine, surgery and dentistry for two years or more immediately before filing his application to practice in this state and who shall submit to the director a duly attested certificate from the examining board of the state or territory in which he is registered, certifying to the fact of his registration and of his being a person of good moral character and of professional attainments, may upon the payment of the fee as provided herein, be granted a license to practice veterinary medicine, surgery and dentistry in this state, without being required to take an examination: *Provided, however,* That no license shall be issued to any applicant, unless the state or territory from which such certificate has been granted to such applicant shall have extended a like privilege to engage in the practice of veterinary medicine, surgery and dentistry within its own borders to veterinarians heretofore and hereafter licensed by this state, and removing to such other state: *And provided further,* That the director of licenses shall have power to enter into reciprocal relations with other states whose requirements are substantially the same as those provided herein. The board shall make recommendations to the director upon all requests for reciprocity. [1959 c 92 § 10; 1941 c 71 § 12; Rem. Supp. 1941 § 10040-12.]

**18.92.140 License—Annual renewal.** Each person now qualified to practice veterinary medicine, surgery and dentistry in this state or who shall hereafter be licensed to engage in such practice, shall register with the director of licenses annually and pay the annual renewal registration fee provided hereinafter on or before the first day of July of each year, and thereafter the license of such person shall be renewed for such calendar year. [1941 c 71 § 16; Rem. Supp. 1941 § 10040-16. FORMER PARTS OF SECTION: (i) 1941

c 71 § 17; Rem. Supp. 1941 § 10040-17, now codified as RCW 18.92.142. (ii) 1941 c 71 § 19, part; Rem. Supp. 1941 § 10040-19, part, now codified as RCW 18.92.145.]

**18.92.142 License—Penalty.** Any failure, neglect, or refusal on the part of any person duly licensed to practice veterinary medicine, surgery, and dentistry by said director, to register and pay the annual registration fee to the director on or before July 1st of each year shall render the license invalid, and it shall not be reinstated except upon written application therefor to the director and payment of a penalty determined by the director as provided in RCW 43.24.085 as now or hereafter amended, together with all delinquent annual license renewal fees. [1975 1st ex.s. c 30 § 83; 1941 c 71 § 17; Rem. Supp. 1941 § 10040-17. Formerly RCW 18.92.140, part.]

**18.92.145 License, permit and annual renewal fees.** The director shall determine the fees, as provided in RCW 43.24.085 as now or hereafter amended, for the issuance, renewal, or administration of the following licenses, permit, or examination:

(1) For a license to practice veterinary medicine, surgery, and dentistry issued upon an examination given by the examining board;

(2) For a license to practice veterinary medicine, surgery, and dentistry issued upon the basis of a license issued in another state;

(3) For the annual renewal of a license to practice veterinary medicine, surgery, and dentistry;

(4) For a temporary permit to practice veterinary medicine, surgery, and dentistry. The temporary permit fee shall be accompanied by the full amount of the examination fee. [1975 1st ex.s. c 30 § 84; 1971 ex.s. c 266 § 20; 1967 ex.s. c 50 § 9; 1959 c 92 § 12; 1941 c 71 § 19; Rem. Supp. 1941 § 10040-19. Prior: 1907 c 124 §§ 9, 10. Formerly RCW 18.92.090 and 18.92.140.]

**18.92.150 License—Display.** Every person holding a license under the provisions of this chapter shall conspicuously display it in his principal place of business, together with the annual renewal license certificate. [1941 c 71 § 18; Rem. Supp. 1941 § 10040-18.]

**18.92.160 Suspension or revocation of licenses—Grounds.** The license of any person heretofore or hereafter granted to practice veterinary medicine, surgery and dentistry in this state may be suspended for a certain period of time or revoked by the board for any of the following causes, which shall be deemed to be unprofessional conduct within the meaning of this chapter:

(1) The employment of fraud, misrepresentation or deception in obtaining such license, including animal technician application.

(2) Found guilty of a crime involving moral turpitude.

(3) Chronic inebriety or habitual use of drugs.

(4) Fraud in representation as to skill or ability.

(5) Use of untruthful or improbable statements in advertisements, publicity material or interviews.

(6) Distribution of alcohol or drugs for any other than legitimate purposes.

(7) Personation of another licensed practitioner.

(8) Violation or attempting to violate, directly or indirectly, any of the provisions of this chapter and any rules or regulation promulgated by the board pursuant to RCW 18.92.160 as amended by \*this 1974 amendatory act.

(9) Gross incompetency in the practice of his profession.

(10) Violation of the ethics of the profession. The code of ethics adopted by the board of governors shall be the standard of ethics for the licensed veterinarians of this state.

(11) Revocation of a license to practice veterinary medicine for cause by another state, territory, or district of the United States on grounds other than nonpayment of registration or license fees. [1974 ex.s. c 44 § 7; 1967 ex.s. c 50 § 10; 1961 c 157 § 1; 1941 c 71 § 13; Rem. Supp. 1941 § 10040-13. Formerly RCW 18.92.170, part.]

\*Reviser's note: "this 1974 amendatory act", see note following RCW 18.92.030.

*False advertising: Chapter 9.04 RCW.*

*False personation: RCW 9A.60.040.*

*Habitual drug users, penalty: RCW 69.32.080.*

*Uniform controlled substances act: Chapter 69.50 RCW.*

**18.92.180 Revocation and suspension of licenses—Proceedings.** In all proceedings having for their purpose the revocation or suspension of a license to practice veterinary medicine, surgery and dentistry, the holder of such license shall be given twenty days notice in writing which shall specify the offense or offenses against this chapter with which said accused person is charged, and said notice shall also give the day and place where the hearing is to be held. The board or its designated hearing officer shall have the power to issue subpoenas to compel the attendance of witnesses, or the production of books or documents. The accused person shall have opportunity to make his defense, and may have issued such subpoenas as he may desire. Witnesses shall testify under oath. The board or its designated hearing officer shall hear and determine the charges and shall make findings and conclusion upon the evidence produced, and shall file the same in the director's office, together with a transcript of all the evidence, a duplicate copy of which shall be served upon the accused. The revocation or suspension of a license to practice shall be in writing signed by the director, stating the grounds upon which such order is based. [1967 ex.s. c 50 § 11; 1959 c 92 § 11; 1941 c 71 § 14; Rem. Supp. 1941 § 10040-14. Formerly RCW 18.92.180 through 18.92.200.]

**18.92.210 Revocation and suspension of licenses—Appeal.** Any person feeling himself aggrieved by an order of the director shall have the right to appeal from such order within fifteen days after a copy of such order is served upon him, to the superior court of any county, which court shall hear such matter de novo. An appeal shall lie to the supreme court or the court of appeals of the state from the judgment of said superior court in the

same manner as provided by law in other civil cases. [1971 c 81 § 63; 1941 c 71 § 15; Rem. Supp. 1941 § 10040-15.]

**18.92.220 Unlawful use of title "veterinary".** It shall be unlawful for any person to append any veterinary title to his name, without having been authorized so to do legally, or to assume or advertise any veterinary title in such manner as to convey the impression that he is a lawful practitioner of veterinary medicine, surgery and dentistry. [1941 c 71 § 22; Rem. Supp. 1941 § 10040-22. Prior: 1907 c 124 § 16.]

**18.92.230 Use of another's license or diploma a felony—Penalty.** Any person filing or attempting to file, as his own, the diploma or license of another shall be deemed guilty of a felony, and upon conviction thereof, shall be subject to such fine and imprisonment as is made and provided by the statutes of this state for the crime of forgery. [1941 c 71 § 23; Rem. Supp. 1941 § 10040-23.]

*Forgery: RCW 9A.60.020.*

**18.92.235 Injunction to restrain practice without license.** If any person engages in the practice of veterinary medicine, surgery and dentistry as defined in this chapter without possessing a valid license to do so, the attorney general, any prosecuting attorney, the director of licenses, the Washington State Veterinary Medical Association, or any citizen of the same county in which [such] person engages in such practice may maintain an action to enjoin such person from engaging in such practice. The injunction shall not relieve such person from criminal prosecution and shall be in addition to liability for criminal prosecution. [1959 c 92 § 14.]

**18.92.240 Violations generally—Penalty.** Violation of any of the provisions of this chapter, or of any rule or regulation made pursuant thereto, shall constitute a misdemeanor and punishable by fine of not less than fifty dollars. [1941 c 71 § 24; Rem. Supp. 1941 § 10040-24.]

**18.92.900 Severability—1941 c 71.** Should any section of this chapter, or any portion of any section be for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. [1941 c 71 § 25.]

### Chapter 18.96 LANDSCAPE ARCHITECTS

#### Sections

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**18.96.010 Evidence of qualifications required.** In order to safeguard human health and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice landscape architecture for hire, shall be required to submit evidence that he is qualified so to practice and shall be registered under the provisions of this chapter. [1969 ex.s. c 158 § 1.]

**18.96.020 Registration required.** It shall be unlawful for any person to use, or advertise the title landscape architect, landscape architecture, or landscape architectural, unless such person has duly registered under the provisions of this chapter. [1969 ex.s. c 158 § 2.]

**18.96.030 Definitions.** The following words and phrases as hereinafter used in this chapter shall have the following meanings:

"Director" means the director of motor vehicles of the state of Washington.

"Board" means the state board of registration for landscape architects.

"Landscape architect" means a person who engages in the practice of landscape architecture as hereinafter defined. A person practices landscape architecture within the meaning and intent of this chapter who performs for hire professional services such as consultations, investigations, reconnaissance, research, planning, design or teaching supervision in connection with the development of land areas where, and to the extent that, the dominant purpose of such services is the preservation, enhancement, or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, the settings and approaches to structures or other improvements, or natural drainage and erosion control. This practice shall include the location, design, and arrangement of such tangible objects as pools, walls, steps, trellises, canopies, and other nonhabitable structures, and such features as are incidental and necessary to the purposes outlined herein. It involves the design and arrangement of land forms and the development of outdoor space including, but not limited to, the design of public parks, playgrounds, cemeteries, home and school grounds, and the development of industrial and recreational sites. [1969 ex.s. c 158 § 3.]

**18.96.040 Board of registration for landscape architects—Created—Members—Qualifications.** There



is created a state board of registration for landscape architects. The board shall consist of three landscape architects and two members from closely related professions and/or trades. Members of the board shall be appointed by the governor and must be residents of this state having the qualifications required by this chapter.

Members of the board must, while serving on the board, be actively engaged in their profession or trade and, immediately preceding appointment, have had at least five years experience in responsible charge of work or teaching within their profession or trade. [1969 ex.s. c 158 § 4.]

**18.96.050 Board of registration for landscape architects—Terms of office—Removal—Compensation.** The members of the first board shall serve for the following terms:

One member for one year, one member for two years, one member for three years, one member for four years, and one member for five years from the date of appointment or until successors are duly appointed and qualified. Every member of the board shall receive a certificate of his appointment from the governor and before beginning his term of office shall file with the secretary of state his written oath or affirmation for the faithful discharge of his official duties. On the expiration of the term of each member, the governor shall appoint a successor to serve for a term of five years, or until his successor has been appointed and qualified: *Provided*, That no member shall serve more than ten consecutive years.

The governor may remove any member of the board for cause. Vacancies in the board for any reason shall be filled by appointment for the unexpired term. In carrying out the provisions of this chapter, the members of the board shall receive twenty-five dollars per day as compensation and shall be reimbursed for travel expenses according to the provisions of RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, such funds to be provided from the landscape architects' account in the state general fund. [1975-'76 2nd ex.s. c 34 § 54; 1969 ex.s. c 158 § 5.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.96.060 Board of registration for landscape architects—Rules—Quorum—Hearings—Subpoena power.** The board shall adopt rules for its own organization and procedure and such other rules as it may deem necessary to the proper performance of its duties. Three members of the board shall constitute a quorum for the conduct of any business of the board.

The board may conduct hearings concerning alleged violations of the provisions of this chapter. In conducting such hearings the chairman of the board, or any member of the board acting in his place, may administer oaths or affirmations to witnesses appearing before the board, subpoena witnesses and compel their attendance, and require the production of books, records, papers and documents. If any person shall refuse to obey any subpoena so issued, or shall refuse to testify or to produce any books, records, papers or documents so required to

be produced, the board may present its petition to the superior court of the county in which such person resides, setting forth the facts, and thereupon the court shall, in any proper case, enter a suitable order compelling compliance with the provisions of this chapter and imposing such other terms and conditions as the court may deem equitable. [1969 ex.s. c 158 § 6.]

**18.96.070 Qualifications of applicants.** The following will be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional landscape architect.

The applicant must have completed a course of study in landscape architecture and have been graduated from a college or school approved by the board as offering a curriculum in landscape architecture, or the equivalent thereof, in any form of training, as determined by the board. Each complete year of study in any registered college or school of landscape architecture may be accepted in lieu of one year of equivalent training.

He must have a minimum of seven years in any combination of training and experience, and shall present proof to the director of passing such written examinations as may be prescribed by the board.

Registration under this chapter shall be on an individual, personal basis, and the director shall not register any firm, company, partnership, corporation, nor any public agency. Corporate practice is not permitted under the provisions of this chapter. [1969 ex.s. c 158 § 7.]

**18.96.080 Applications—Contents—Fees—Practitioners at time of enactment.** Application for registration shall be filed with the director prior to the date set for examination and shall contain statements made under oath showing the applicant's education and a detailed summary of his practical experience, and shall contain not less than five references, of whom three or more shall be landscape architects having personal knowledge of his landscape architectural experience.

The application fee shall be determined by the director as provided in RCW 43.24.085 as now or hereafter amended and shall include a nonrefundable examination fee, and a fee for issuance of the certificate.

The application fee for reexamination shall be determined by the director as provided in RCW 43.24.085 as now or hereafter amended and shall include, and must be filed with the director not less than six days prior to the date set for examination.

At any time within the first two years following August 11, 1969, the board shall certify for registration, without examination, any applicant who submits proof that he has had at least a combination of education and experience substantially equivalent to six years of practice in landscape architecture prior to August 11, 1969. [1975 1st ex.s. c 30 § 85; 1969 ex.s. c 158 § 8.]

**18.96.090 Examinations.** Examinations of applicants for certificates of registration shall be held at least annually or at such times and places as the board may determine. The board shall determine from the examination and the material submitted with the applications

whether or not the applicants possess sufficient knowledge, ability and moral fitness to safely and properly practice landscape architecture and to hold themselves out to the public as persons qualified for that practice.

The scope of the examination and methods of procedure shall be prescribed by the board with special reference to landscape construction materials and methods, grading and drainage, plant materials suited for use in the northwest, specifications and supervisory practice, history and theory of landscape architecture relative to landscape architectural design, site planning and land design, subdivision, urban design, and a practical knowledge of botany, horticulture and similar subjects related to the practice of landscape architecture.

Applicants who fail to pass any subjects shall be permitted to retake the examination in the subjects failed, a minimum passing grade in each subject shall be seventy percent with an average in all subjects of seventy-five percent. A passing grade in any subject area shall exempt the applicant from examination in that subject for five years: *Provided*, That failure to complete successfully the entire examination within five years will result in requiring a retake of the entire examination. A certificate of registration shall be granted by the director to all qualified applicants who shall be certified by the board as having passed the required examination and as having given satisfactory proof of completion of the required experience. [1969 ex.s. c 158 § 9.]

**18.96.100 Reciprocity.** The director may, upon payment of a filing and investigation fee including the current registration fee in an amount as determined by the director as provided in RCW 43.24.085 as now or hereafter amended, grant a certificate of registration without examination to any applicant who is a registered landscape architect in any other state or country whose requirements for registration are at least substantially equivalent to the requirements of this state for registration by examination, and which extends the same privileges of reciprocity to landscape architects registered in this state. [1975 1st ex.s. c 30 § 86; 1969 ex.s. c 158 § 10.]

**18.96.110 Expiration date—Renewals.** Certificates of registration shall expire on the last day of June following their issuance or renewal. The director shall set the yearly fee for renewal which shall be determined as provided in RCW 43.24.085 as now or hereafter amended. Renewal may be effected during the month of June by payment to the director of the required fee.

In case any registrant fails to pay the renewal fee before thirty days after the due date, the renewal fee shall be the current fee plus an amount equal to one year's fee at the discretion of the board: *Provided*, That any registrant in good standing, upon fully retiring from landscape architectural practice, may withdraw from practice by giving written notice to the director, and may thereafter resume practice at any time upon payment of the then current annual renewal fee. Any registrant, other than a properly withdrawn licensee, who fails to renew his registration for a period of one year may reinstate only on reexamination as is required for

new registrants. [1975 1st ex.s. c 30 § 87; 1969 ex.s. c 158 § 11.]

**18.96.120 Refusal, suspension or revocation of certificates—Grounds.** The director may refuse to renew, or may suspend or revoke, a certificate of registration to use the titles landscape architect, landscape architecture, or landscape architectural in this state upon the following grounds:

(1) The holder of the certificate of registration is impersonating a practitioner or former practitioner.

(2) The holder of the certificate of registration is guilty of fraud, deceit, gross negligence, gross incompetency or gross misconduct in the practice of landscape architecture.

(3) The holder of the certificate of registration permits his seal to be affixed to any plans, specifications or drawings that were not prepared by him or under his personal supervision by employees subject to his direction and control.

(4) The holder of the certificate has committed fraud in applying for or obtaining a certificate. [1969 ex.s. c 158 § 12.]

**18.96.130 Charges against registrants—Hearings—Findings.** Any person may prefer charges of fraud, deceit, gross negligence, incompetency, or misconduct against any registrant. Such charges shall be in writing and shall be sworn to by the person making them and shall be filed with the director.

All charges unless dismissed by the director as unfounded or trivial, shall be heard by the board within three months after the date on which they have been preferred.

Action of suspension, revocation, or refusal to renew, by the director, shall be based upon the findings of the board after charges and evidence in support thereof have been heard and determined. [1969 ex.s. c 158 § 13.]

**18.96.140 Restoration of suspended or revoked licenses—Reissuance of lost or destroyed certificates.** Upon the recommendations of the board, the director may restore a license to any person whose license has been suspended or revoked. Application for the reissuance of a license shall be made in such a manner as indicated by the board.

A new certificate of registration to replace any certificate lost or destroyed, or mutilated may be issued by the director, and a charge determined by the director as provided in RCW 43.24.085 as now or hereafter amended shall be made for such issuance. [1975 1st ex.s. c 30 § 88; 1969 ex.s. c 158 § 14.]

**18.96.150 Certificates of registration—Issuance—Contents—Seal.** The director shall issue a certificate of registration upon payment of the registration fee as provided in this chapter to any applicant who has satisfactorily met all requirements for registration. All certificates of registration shall show the full name of the registrant, shall have a serial number and shall be signed by the chairman and the secretary of the board, and by the director.

Each registrant shall obtain a seal of a design authorized by the board, bearing the registrant's name and the legend, "registered landscape architect". All sheets of drawings and title pages of specifications prepared by the registrant shall be stamped with said seal. [1969 ex.s. c 158 § 15.]

**18.96.160 Misuse of seal.** It shall be unlawful for anyone to stamp or seal any document with the seal after the certificate of registrant named thereon has expired or been revoked, or while the certificate is suspended. [1969 ex.s. c 158 § 16.]

**18.96.170 Penalty.** Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor. [1969 ex.s. c 158 § 17.]

**18.96.180 Injunctions—Board members not personally liable—Prosecutions.** The board is authorized to apply for relief by injunction without bond to restrain a person from the commission of any act which is prohibited by this chapter. The members of the board shall not be personally liable for their action in any such proceeding or in any other proceeding instituted by the board under the provisions of this chapter. The board, in any proper case, shall cause prosecution to be instituted in any county or counties where any violation of this chapter occurs, and shall aid in the prosecution of the violator. [1969 ex.s. c 158 § 18.]

**18.96.900 Severability—1969 ex.s. c 158.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 158 § 19.]

## Chapter 18.100 PROFESSIONAL SERVICE CORPORATIONS

### Sections

- 18.100.010 Legislative intent.
- 18.100.020 Short title.
- 18.100.030 Definitions.
- 18.100.040 Application of chapter to previously organized corporations.
- 18.100.050 Organization of professional service corporations authorized.
- 18.100.060 Rendering of services through legally authorized officers and employees required.
- 18.100.070 Professional relationships and liabilities not abolished, modified, restricted or limited.
- 18.100.080 Engaging in other business prohibited—Investments.
- 18.100.090 Stock issuance and voting restrictions.
- 18.100.100 Legal disqualification of officer, shareholder or employee to render professional service, effect.
- 18.100.110 Sale or transfer of shares.
- 18.100.120 Name—Abbreviations—Listing of shareholders.
- 18.100.130 Application of business corporation act—Consolidations and mergers.
- 18.100.135 Corporation officers when only one or two shareholders.
- 18.100.140 Illegal, unethical or unauthorized conduct not authorized.

**18.100.010 Legislative intent.** It is the legislative intent to provide for the incorporation of an individual or group of individuals to render the same professional service to the public for which such individuals are

required by law to be licensed or to obtain other legal authorization. [1969 c 122 § 1.]

**18.100.020 Short title.** This chapter may be cited as "the professional service corporation act". [1969 c 122 § 2.]

**18.100.030 Definitions.** As used in this chapter the following words shall have the meaning indicated:

(1) The term "professional service" shall mean any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which prior to the passage of this chapter and by reason of law could not be performed by a corporation, including, but not by way of limitation, certified public accountants, chiropractors, dentists, osteopaths, physicians, podiatrists, chiroprodists, architects, veterinarians and attorneys at law.

(2) The term "professional corporation" means a corporation which is organized under this chapter for the purpose of rendering professional service and which has as its shareholder or shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation. [1969 c 122 § 3.]

**18.100.040 Application of chapter to previously organized corporations.** This chapter shall not apply to any individuals or groups of individuals within this state who prior to the passage of this chapter were permitted to organize a corporation and perform personal services to the public by means of a corporation, and this chapter shall not apply to any corporation organized by such individual or group of individuals prior to the passage of this chapter: *Provided*, That any such individual or group of individuals or any such corporation may bring themselves and such corporation within the provisions of this chapter by amending the articles of incorporation in such a manner so as to be consistent with all the provisions of this chapter and by affirmatively stating in the amended articles of incorporation that the shareholders have elected to bring the corporation within the provisions of this chapter. [1969 c 122 § 4.]

**18.100.050 Organization of professional service corporations authorized.** An individual or group of individuals duly licensed or otherwise legally authorized to render the same professional services within this state may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of Title 23A RCW for the purpose of rendering professional service: *Provided*, That one or more of such legally authorized individuals shall be the incorporators of such professional corporation: *Provided further*, That notwithstanding any other provision of this chapter, registered architects and registered engineers may own stock in and render their individual professional services through one professional service corporation. [1969 c 122 § 5.]

**18.100.060 Rendering of services through legally authorized officers and employees required.** No corporation organized and incorporated under this chapter may render professional services except through its directors, officers, employees or agents all of whom must be duly licensed or otherwise legally authorized to render such professional services within this state: *Provided*, That said term "employees" shall not be interpreted to mean clerks, secretaries, bookkeepers, technicians and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required. [1969 c 122 § 6.]

**18.100.070 Professional relationships and liabilities not abolished, modified, restricted or limited.** Nothing contained in this chapter shall be interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and the standards for professional conduct. Any director, officer, shareholder, agent or employee of a corporation organized under this chapter shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him or by any person under his direct supervision and control, while rendering professional services on behalf of the corporation to the person for whom such professional services were being rendered. The corporation shall be liable for any negligent or wrongful acts of misconduct committed by any of its directors, officers, shareholders, agents or employees while they are engaged on behalf of the corporation, in the rendering of professional services. [1969 c 122 § 7.]

**18.100.080 Engaging in other business prohibited—Investments.** No professional service corporation organized under this chapter shall engage in any business other than the rendering of the professional services for which it was incorporated: *Provided*, That nothing in this chapter or in any other provisions of existing law applicable to corporations shall be interpreted to prohibit such corporation from investing its funds in real estate, personal property, mortgages, stocks, bonds, insurance, or any other type of investments. [1969 c 122 § 8.]

**18.100.090 Stock issuance and voting restrictions.** No professional service corporation organized under the provisions of this chapter may issue any of its capital stock to anyone other than an individual who is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the corporation was incorporated. No shareholder of a corporation organized under this chapter shall enter into a voting trust agreement or any other type agreement vesting another person with the authority to exercise the voting power of any or all of his stock. [1969 c 122 § 9.]

**18.100.100 Legal disqualification of officer, shareholder or employee to render professional service, effect.** If any director, officer, shareholder, agent or employee of

a corporation organized under this chapter who has been rendering professional service to the public becomes legally disqualified to render such professional services within this state, he shall sever all employment with, and financial interests in, such corporation forthwith. A corporation's failure to require compliance with this provision shall constitute a ground for the forfeiture of its articles of incorporation and its dissolution. When a corporation's failure to comply with this provision is brought to the attention of the office of the secretary of state, the secretary of state forthwith shall certify that fact to the attorney general for appropriate action to dissolve the corporation. [1969 c 122 § 10.]

**18.100.110 Sale or transfer of shares.** No shareholder of a corporation organized as a professional service corporation may sell or transfer his shares in such corporation except to another individual who is eligible to be a shareholder of such corporation. The articles of incorporation of a professional service corporation shall require that each shareholder in the corporation provide for a redemption or cancellation of all shares which are transferred to any person or entity ineligible to be a shareholder, whether such transfer be voluntary, involuntary or by operation of law. [1969 c 122 § 11.]

**18.100.120 Name—Abbreviations—Listing of shareholders.** Corporations organized pursuant to this chapter shall render professional service and exercise its authorized powers under a name permitted by law and the professional ethics of the profession in which the corporation is so engaged. In the event that the words "company", "corporation" or "incorporated" or any other word, abbreviation, affix or prefix indicating that it is a corporation shall be used, it shall be accompanied with the abbreviation "P.S." With the filing of its first annual report and any filings thereafter, professional service corporation shall list its then shareholders: *Provided*, That notwithstanding the foregoing provisions of this section, the corporate name of a corporation organized to render dental services shall contain the full names or surnames of all shareholders and no other word than "chartered" or the words "professional services" or the abbreviation "P.S." [1969 c 122 § 12.]

**18.100.130 Application of business corporation act—Consolidations and mergers.** The provisions of Title 23A RCW shall be applicable to a corporation organized pursuant to this chapter except to the extent that any of the provisions of this chapter are interpreted to be in conflict with the provisions thereof, and in such event the provisions and sections of this chapter shall take precedence with respect to a corporation organized pursuant to the provisions of this chapter. A professional corporation organized under this chapter shall consolidate or merge only with another domestic professional corporation organized under this chapter to render the same specific professional service and a merger or consolidation with any foreign corporation is prohibited. [1969 c 122 § 13.]

**18.100.135 Corporation officers when only one or two shareholders.** A professional corporation which has only one shareholder need have only one director who shall be such shareholder and who shall also serve as president, vice president, secretary, and treasurer. A professional corporation which has only two shareholders need have only two directors who shall be such shareholders. The two shareholders between them shall fill the offices of president, vice president, secretary, and treasurer except that the offices of president and secretary shall not be held by the same shareholder. [1971 c 57 § 1.]

**18.100.140 Illegal, unethical or unauthorized conduct not authorized.** Nothing in this chapter shall authorize a director, officer, shareholder, agent or employee of a corporation organized under this chapter, or a corporation itself organized under this chapter, to do or perform any act which would be illegal, unethical or unauthorized conduct under the provisions of the following acts: (1) Medical disciplinary act, chapter 18.72 RCW; (2) Anti-rebating act, chapter 19.68 RCW; (3) State bar act, chapter 2.48 RCW; (4) Professional accounting act, chapter 18.04 RCW; (5) Professional architects act, chapter 18.08 RCW; (6) Professional auctioneers act, chapter 18.11 RCW; (7) Barbers, chapter 18.15 RCW; (8) Beauty culturists act, chapter 18.18 RCW; (9) Boarding homes act, chapter 18.20 RCW; (10) Chiroprody, chapter 18.22 RCW; (11) Chiropractic act, chapter 18.25 RCW; (12) Registration of contractors, chapter 18.27 RCW; (13) Debt adjusting act, chapter 18.28 RCW; (14) Dental hygienist act, chapter 18.29 RCW; (15) Dentistry, chapter 18.32 RCW; (16) Dispensing opticians, chapter 18.34 RCW; (17) Drugless healing, chapter 18.36 RCW; (18) Embalmers and funeral directors, chapter 18.39 RCW; (19) Engineers and land surveyors, chapter 18.43 RCW; (20) Escrow agents registration act, chapter 18.44 RCW; (21) Furniture and bedding industry, chapter 18.45 RCW; (22) Maternity homes, chapter 18.46 RCW; (23) Midwifery, chapter 18.50 RCW; (24) Nursing homes, chapter 18.51 RCW; (25) Optometry, chapter 18.53 RCW; (26) Osteopathy, chapter 18.57 RCW; (27) Patent medicine peddlers, \*chapter 18.60 RCW; (28) Pharmacists, chapter 18.64 RCW; (29) Pharmacy owners and wholesale druggists, \*chapter 18.67 RCW; (30) Physical therapy, chapter 18.74 RCW; (31) Practical nurses, chapter 18.78 RCW; (32) Prophylactic vendors, chapter 18.81 RCW; (33) Proprietary schools, chapter 18.82 RCW; (34) Psychologists, chapter 18.83 RCW; (35) Real estate brokers and salesmen, chapter 18.85 RCW; (36) Registered professional nurses, chapter 18.88 RCW; (37) Sanitariums, chapter 18.90 RCW; (38) Veterinarians, chapter 18.92 RCW. [1969 c 122 § 14.]

\*Reviser's note: "chapter 18.60 RCW" and "chapter 18.67 RCW" now codified in chapter 18.64 RCW.

### Chapter 18.104

## WATER WELL CONSTRUCTION

### Sections

- 18.104.010 Purpose.  
18.104.020 Definitions.

- 18.104.030 Compliance enjoined.  
18.104.040 Powers of department.  
18.104.050 Reports of water well construction or alteration.  
18.104.060 Violations—Cease and desist orders.  
18.104.070 License required—Qualifications—Fee—Examination—Exemption from chapter 18.27 RCW.  
18.104.080 Examinations—Subjects—Times and places.  
18.104.090 Examining board.  
18.104.100 Licenses—Duration—Renewal—Fee—Failure to renew, procedure.  
18.104.110 Suspension or revocation of licenses—Grounds—Duration.  
18.104.120 Complaints against contractors or operators.  
18.104.130 Hearings—Procedure—Judicial review.  
18.104.140 Proceedings governed by chapters 43.21 B and 34.04 RCW.  
18.104.150 Receipts paid to general fund.  
18.104.160 Penalties—Prosecutions.  
18.104.170 Remedies cumulative.  
18.104.180 Exemptions.  
18.104.900 Short title.  
18.104.910 Effective date—1971 ex.s. c 212.  
18.104.920 Severability—1971 ex.s. c 212.

**18.104.010 Purpose.** The legislature declares that the drilling, making or constructing of water wells using the ground water resources within the state is a business and activity of vital interest to the public. In order to protect the public health, welfare, and safety of the people it is necessary that provision be made for the regulation and licensing of water well contractors and operators and for the regulation of water well construction. [1971 ex.s. c 212 § 1.]

**18.104.020 Definitions.** As used in this chapter, unless a different meaning is plainly required by the context:

- (1) "Constructing a well" or "construct a well" means and includes boring, digging, drilling, or excavating and installing casing, sheeting, lining or well screens, whether in the installation of a new well or in the alteration of an existing well.
- (2) "Department" means the department of ecology.
- (3) "Director" means the director of the department of ecology.
- (4) "Examining board" means the board established pursuant to RCW 18.104.090.
- (5) "Ground water" means and includes ground waters as defined in RCW 90.44.035, as now or hereafter amended.
- (6) "Operator" means any person, other than a person exempted by RCW 18.104.180, who is employed by a water well contractor for the control and supervision of the construction of a water well or for the operation of water well construction equipment.
- (7) "Water well" means and includes any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed when the intended use of the well is for the location, diversion, artificial recharge, or withdrawal of ground water. "Water well" does not mean an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals or products of mining, or quarrying, or for inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas or other products.
- (8) "Water well contractor" means any person, firm, partnership, copartnership, corporation, association, or

other entity engaged in the business of constructing water wells. [1971 ex.s. c 212 § 2.]

**18.104.030 Compliance enjoined.** It is unlawful:

(1) For any water well contractor to construct a water well for compensation without complying with the licensing provisions of this chapter;

(2) For any water well contractor to construct a water well for compensation without complying with the rules and regulations for water well construction adopted pursuant to this chapter;

(3) For any water well construction operator to supervise the construction of a water well without having an operators license as provided in this chapter. [1971 ex.s. c 212 § 3.]

**18.104.040 Powers of department.** The department shall have the power:

(1) To issue, deny, suspend or revoke licenses pursuant to the provisions of this chapter;

(2) To enter upon lands for the purpose of inspecting any water well, drilled or being drilled, at all reasonable times;

(3) To call upon or receive professional or technical advice from any public agency or any person;

(4) To make such rules and regulations governing licensing hereunder and water well construction as may be appropriate to carry out the purposes of this chapter. Without limiting the generality of the foregoing, the department may in cooperation with the department of social and health services make rules and regulations regarding:

(a) Standards for the construction and maintenance of water wells and their casings;

(b) Methods of sealing artesian wells and water wells to be abandoned or which may contaminate other water resources;

(c) Methods of artificial recharge of ground water bodies and of construction of wells which insure separation of individual water bearing formations;

(d) The manner of conducting and the content of examinations required to be taken by applicants for license hereunder;

(e) Reporting requirements of water well contractors;

(f) Limitations on water well construction in areas identified by the department as requiring intensive control of withdrawals in the interests of sound management of the ground water resource. [1971 ex.s. c 212 § 4.]

**18.104.050 Reports of water well construction or alteration.** In order to enable the state to protect the welfare, health and safety of its citizens, any water well contractor shall furnish a water well report to the director within thirty days after the completion of the construction or alteration by him of any water well. The director, by regulation, shall prescribe the form of the report and the information to be contained therein. [1971 ex.s. c 212 § 5.]

**18.104.060 Violations—Cease and desist orders.** Notwithstanding and in addition to any other powers granted to the department, whenever it appears to the

director, or to an assistant authorized by the director to issue regulatory orders under this section, that a person is violating or is about to violate any of the provisions of this chapter, the director, or his authorized assistant, may cause a written regulatory order to be served upon said person either personally, or by registered or certified mail delivered to the addressee only with return receipt requested and acknowledged by him. The order shall specify the provision of this chapter, and if applicable, the rule or regulation adopted pursuant to this chapter alleged to be or about to be violated, and the facts upon which the conclusion of violating or potential violation is based, and shall order the act constituting the violation or the potential violation to cease and desist or, in appropriate cases, shall order necessary corrective action to be taken with regard to such acts within a specific and reasonable time. A regulatory order issued hereunder shall become effective immediately upon receipt by the person to whom the order is directed, and shall become final unless review thereof is requested as provided in this chapter. [1971 ex.s. c 212 § 6.]

**18.104.070 License required—Qualifications—Fee—Examination—Exemption from chapter 18.27 RCW.** Except as provided in RCW 18.104.180, no person may contract to engage in the construction of a water well and no person may act as an operator without first obtaining a license by applying to the department.

A person shall be qualified to receive a water well construction operators license if he:

(1) Has made application therefor to the department and has paid to the department an application fee of twenty-five dollars; and

(2) Has passed a written examination as provided for in RCW 18.104.080: *Provided*, That should any applicant establish his illiteracy to the satisfaction of the department, such applicant shall be entitled to an oral examination in lieu of the written examination authorized herein.

Licenses hereunder shall, in order to construct water wells, be exempt from the registration requirements of chapter 18.27 RCW [1971 ex.s. c 212 § 7.]

**18.104.080 Examinations—Subjects—Times and places.** The examination, which is made a prerequisite for obtaining a license hereunder, shall be prepared to test knowledge and understanding of the following subjects:

(1) Washington ground water laws as they relate to well construction;

(2) Sanitary standards for water well drilling and construction of water wells;

(3) Types of water well construction;

(4) Drilling tools and equipment;

(5) Underground geology as it relates to water well construction; and

(6) Rules and regulations of the department and the department of social and health services relating to water well construction.

Examinations shall be held at such times and places as may be determined by the department but not later than thirty days after an applicant has filed a completed



application with the department. The department shall make a determination of the applicant's qualifications for a license within ten days after the examination. [1971 ex.s. c 212 § 8.]

**18.104.090 Examining board.** Examinations hereunder shall be prepared, administered and evaluated by a three member examining board. The director shall accept the examining board's determination with regard to examination results and shall not substitute his judgment in such matter for that of the examining board. The examining board shall be appointed as follows: One member shall be named from the department by the director, one member from the department of social and health services by the secretary, and one member shall be appointed by the governor for a term of two years, expiring on June 30 of each odd-numbered year; the latter being a person other than one employed by the state, actively engaged in water well drilling activities at the time of his appointment. The member appointed by the governor shall serve without compensation, but shall be reimbursed for travel expenses while engaged in the business of the board as prescribed in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 55; 1971 ex.s. c 212 § 9.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.104.100 Licenses—Duration—Renewal—Fee—Failure to renew, procedure.** The term for the effectiveness of any license issued pursuant to this chapter shall be one year, commencing on the date the license is issued. Every license shall be renewed annually upon payment of a renewal fee of ten dollars. If a licensee fails to submit an application for renewal, together with the renewal fee, before the end of the effective term of his license, his license shall be suspended for thirty days on notice by the director. If his renewal fee is paid prior to the end of said suspension period, the suspension shall automatically terminate. If during the period of suspension renewal is not completed, his license shall be revoked: *Provided*, That the director shall give the licensee ten days notice prior to the revocation of any license for failure to renew.

A person whose license is revoked under this section and who thereafter desires to engage in the supervision of construction of water wells must make application for a new license and pay twenty-five dollars as provided in RCW 18.104.070. [1971 ex.s. c 212 § 10.]

**18.104.110 Suspension or revocation of licenses—Grounds—Duration.** In cases other than those relating to the failure of a licensee to renew a license, any license issued hereunder may be suspended or revoked by the director for any of the following reasons:

- (1) For fraud or deception in obtaining the license;
- (2) For fraud or deception in reporting under RCW 18.104.050;
- (3) For violating the provisions of this chapter, or of any lawful rule or regulation of the department or the department of social and health services.

No license shall be suspended for more than six months. No person whose license is revoked shall be eligible to apply for a license for one year from the effective date of the final order of revocation. [1971 ex.s. c 212 § 11.]

**18.104.120 Complaints against contractors or operators.** Any person with an economic or noneconomic interest may make a complaint against any water well contractor or operator for violating the provisions of this chapter or any regulations pursuant hereto to the pollution control hearings board established pursuant to chapter 43.21B RCW. The complaint shall be in writing, signed by the complainant, specify the grievances against said licensee and be accompanied by a ten dollar filing fee. [1971 ex.s. c 212 § 12.]

**18.104.130 Hearings—Procedure—Judicial review.** Any person who feels aggrieved by an order of the department issued pursuant to this chapter shall be entitled to a hearing before the pollution control hearings board upon request. No such request shall be entertained unless it contains the following:

- (1) Requestor's name and address;
- (2) The date of the order for which the request for review is taken;
- (3) A statement of the substance of the order complained of;
- (4) Clear, separate and concise statements of each and every error which the requestor alleges to have been committed by the department;
- (5) Clear and concise statement of facts upon which the requestor relies to sustain his statements of error;
- (6) A statement setting forth the relief sought.

The request shall be delivered to said pollution control hearings board's office in Olympia, Washington, either personally or by registered mail, within thirty days following the rendition of the order sought to be reviewed. All orders issued by the department as to which a hearing has been requested shall be stayed pending the completion of the hearing process and the issuance of a final order by the pollution control hearings board with the exception of regulatory orders issued pursuant to RCW 18.104.060. Any final order shall be subject to judicial review in accordance with chapter 43.21B RCW.

The issuance of a regulatory order hereunder, the granting or denial of a license hereunder and the revocation or suspension of a license pursuant to RCW 18.104.110 shall be deemed to be orders for the purposes of this section. [1971 ex.s. c 212 § 13.]

**18.104.140 Proceedings governed by chapters 43.21B and 34.04 RCW.** Proceedings authorized by RCW 18.104.130 shall be governed by chapter 43.21B RCW and, to the extent not superseded or modified thereby, by chapter 34.04 RCW. [1971 ex.s. c 212 § 14.]

**18.104.150 Receipts paid to general fund.** All receipts realized in the administration of this chapter shall be paid into the general fund. [1971 ex.s. c 212 § 15.]

**18.104.160 Penalties—Prosecutions.** Any person who shall violate any provision of of this chapter, shall be guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not more than two hundred fifty dollars, or imprisonment in a county jail for a term not to exceed thirty days, or both. Criminal prosecutions for violations of this chapter shall be prosecuted by the prosecuting attorney in the county in which the violation occurred. [1971 ex.s. c 212 § 16.]

**18.104.170 Remedies cumulative.** The remedies provided for in this chapter shall be cumulative and nothing herein shall alter, abridge or foreclose alternative actions at common law or in equity or under statutory law, civil or criminal. [1971 ex.s. c 212 § 17.]

**18.104.180 Exemptions.** No license hereunder shall be required of:

(1) Any individual who personally drills a well on land which is owned or leased by him or in which he has a beneficial interest as a contract purchaser and is used by the individual for farm or noncommercial domestic use only.

(2) Any individual who performs labor or services for a water well contractor in connection with the drilling of a well at the direction and under the supervision and control of a licensed operator. [1971 ex.s. c 212 § 18.]

**18.104.900 Short title.** This chapter shall be known and may be cited as the "Washington Water Well Construction Act". [1971 ex.s. c 212 § 19.]

**18.104.910 Effective date—1971 ex.s. c 212.** This act shall take effect on July 1, 1971. [1971 ex.s. c 212 § 20.]

**18.104.920 Severability—1971 ex.s. c 212.** If any provision of the act, or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 212 § 21.]

## Chapter 18.106 PLUMBERS

### Sections

- 18.106.010 Definitions.
- 18.106.020 Certificate of competency—Required.
- 18.106.030 Application for certificate of competency—Evidence of competency required.
- 18.106.040 Examinations—Eligibility requirements—Determination.
- 18.106.050 Examinations—Scope—Fee—Results—Retaking.
- 18.106.060 Examinations—Local agencies—Uniformity—Fees.
- 18.106.070 Certificates of competency—Issuance—Duration—Renewal—Fee—Rights of holder.
- 18.106.080 Persons engaged in plumbing business or trade on effective date.
- 18.106.090 Temporary permits.
- 18.106.100 Revocation of certificate of competency—Grounds—Procedure.
- 18.106.110 Advisory board of plumbers.
- 18.106.130 Plumbing certificate fund.
- 18.106.140 Powers and duties of director.
- 18.106.150 Exemptions from chapter requirements.

### 18.106.160 Penalty.

**18.106.010 Definitions.** Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meaning:

(1) "Advisory board" means the state advisory board of plumbers;

(2) "Department" means the department of labor and industries;

(3) "Director" means the director of department of labor and industries;

(4) "Journeyman plumber" means any person who has been issued a certificate of competency by the department of labor and industries as provided in this chapter;

(5) "Plumbing" means that craft involved in installing, altering, repairing and renovating potable water systems and liquid waste systems within a building: *Provided*, That installation in a water system of water softening or water treatment equipment shall not be within the meaning of plumbing as used in this chapter;

(6) "Local enforcement agency" shall mean any local governmental agency involved in the enforcement of plumbing codes and the issuance of journeyman plumbers' licenses. [1975 1st ex.s. c 71 § 1; 1973 1st ex.s. c 175 § 1.]

**18.106.020 Certificate of competency—Required.** No person shall engage in the business or trade of plumbing as a journeyman without having a current certificate of competency issued by the department in accordance with the provisions of this chapter. [1975 1st ex.s. c 71 § 2; 1973 1st ex.s. c 175 § 2.]

**18.106.030 Application for certificate of competency—Evidence of competency required.** Any person desiring to be issued a certificate of competency as provided in this chapter shall deliver evidence in a form prescribed by the department affirming that said person has had sufficient experience in as well as demonstrated general competency in the trade of plumbing so as to qualify him to make an application for a certificate of competency as a journeyman plumber: *Provided*, That completion of a course of study in the plumbing trade in the armed services of the United States or at a school accredited by the coordinating council on occupational education shall constitute sufficient evidence of experience and competency to enable such person to make application for a certificate of competency.

In addition to supplying the evidence as prescribed in this section, each applicant for a certificate of competency shall submit an application for such certificate on such form and in such manner as shall be prescribed by the director of the department. [1973 1st ex.s. c 175 § 3.]

**18.106.040 Examinations—Eligibility requirements—Determination.** Upon receipt of the application and evidence set forth in RCW 18.106.030, the director shall review the same and make a determination as to whether the applicant is eligible to take an examination for the certificate of competency. To be eligible to

take the examination the applicant must have worked under the supervision of a journeyman plumber certified under this chapter or have completed a course of study in the plumbing trade in the armed services of the United States or at a school accredited by the coordinating council on occupational education. No other requirement for eligibility may be imposed. The director shall establish reasonable rules and regulations for the examinations to be given applicants for certificates of competency. In establishing said rules, regulations, and criteria, the director shall consult with the state advisory board of plumbers as established in RCW 18.106.110. Upon determination that the applicant is eligible to take the examination, the director shall so notify him, indicating the time and place for taking the same. [1975 1st ex.s. c 71 § 3; 1973 1st ex.s. c 175 § 4.]

**18.106.050 Examinations—Scope—Fee—Results—Retaking.** The department, in coordination with the advisory board, shall prepare a written examination to be administered to applicants for certificates of competency. The examination shall be so constructed to determine:

(1) Whether the applicant possesses varied general knowledge of the technical information and practical procedures that is identified with the status of journeyman plumber; and

(2) Whether the applicant is sufficiently familiar with the applicable plumbing codes and the administrative rules and regulations of the department pertaining to plumbing and plumbers.

The department shall administer the examination to persons eligible to take the same under the provisions of RCW 18.106.040. All applicants shall, before taking such examination, pay to the department a fifteen dollar fee: *Provided*, That any applicant taking said examination shall pay only such additional fee as is necessary to cover the costs of administering such additional examination.

The department shall certify the results of said examination, and shall notify the applicant whether he has passed or failed. Any applicant who has failed the examination may petition the department to retake the examination, upon such terms and after such period of time as the director, in cooperation with the advisory board, shall deem necessary and proper. [1973 1st ex.s. c 175 § 5.]

**18.106.060 Examinations—Local agencies—Uniformity—Fees.** Any local enforcement agency certified by the state shall hold written examinations for licensing journeyman plumbers and shall retain fifty percent of the fees collected for the administration of such examinations. All such examinations given shall be developed by the state agency and shall be uniform throughout the state. The initial issuance of licenses and renewals shall be made by any certified local enforcement agency or the state, and fifty percent of such fees shall be retained by the certified local issuing agency. [1973 1st ex.s. c 175 § 6.]

**18.106.070 Certificates of competency—Issuance—Duration—Renewal—Fee—Rights of holder.** The department shall issue a certificate of competency to all applicants who have passed the examination provided in RCW 18.106.050 and 18.106.060, and who have otherwise complied with the provisions of this chapter and the rules and regulations promulgated thereto. The certificate shall bear the date of issuance, and shall expire on the first of July immediately following the date of issuance. The certificate shall be renewable annually, upon application, on or before the first of July. An annual renewal fee of fifteen dollars shall be assessed for each certificate.

The certificates of competency or permits provided for in this chapter shall grant the holder the right to engage in the work of plumbing as a journeyman plumber in accordance with its provisions throughout the state and within any of its political subdivisions on any job or any employment without additional proof of competency or any other license or permit or fee to engage in such work: *Provided, however*, That this shall not preclude employees from adhering to a union security clause in any employment where such a requirement exists. [1973 1st ex.s. c 175 § 7.]

**18.106.080 Persons engaged in plumbing business or trade on effective date.** No examination shall be required of any applicant for a certificate of competency who, on July 16, 1973, was engaged in a bona fide business or trade of plumbing, or on said date held a valid journeyman plumber's license issued by a political subdivision of the state of Washington and whose license is valid at the time of making his application for said certificate. Applicants qualifying under this section shall be issued a certificate by the department upon making an application as provided in RCW 18.106.030 and paying the fee required under RCW 18.106.050: *Provided*, That no applicant under this section shall be required to furnish such evidence as required by RCW 18.106.030. [1973 1st ex.s. c 175 § 8.]

**18.106.090 Temporary permits.** The department is authorized to grant and issue temporary permits in lieu of certificates of competency whenever a plumber coming into the state of Washington from another state requests the department for a temporary permit to engage in the business and trade of plumbing as a journeyman during the period of time between filing of an application for a certificate as provided in RCW 18.106.030 and taking the examination provided for in RCW 18.106.050 and 18.106.060: *Provided*, That no temporary permit shall be issued to:

(1) Any person who has failed to pass the examination for a certificate of competency;

(2) Any applicant under this section who has not furnished the department with such evidence required under RCW 18.106.030;

(3) To any apprentice plumber. [1973 1st ex.s. c 175 § 9.]

**18.106.100 Revocation of certificate of competency—Grounds—Procedure.** (1) The department

may revoke any certificate of competency upon the following grounds:

(a) The certificate was obtained through error or fraud;

(b) The holder thereof is judged to be incompetent to carry on the business and trade of plumbing as a journeyman plumber;

(c) The holder thereof has violated any of the provisions of this chapter or any rule or regulation promulgated thereto.

(2) Before any certificate of competency shall be revoked, the holder thereof shall be given written notice of the department's intention to do so, mailed by registered mail, return receipt requested, to said holder's last known address. Said notice shall enumerate the allegations against such holder, and shall give him the opportunity to request a hearing before the advisory board. At such hearing, the department and the holder shall have opportunity to produce witnesses and give testimony. The hearing shall be conducted in accordance with the provisions of chapter 34.04 RCW. The board shall render its decision based upon the testimony and evidence presented, and shall notify the parties immediately upon reaching its decision. A majority of the board shall be necessary to render a decision. [1973 1st ex.s. c 175 § 10.]

**18.106.110 Advisory board of plumbers.** (1) There is created a state advisory board of plumbers, to be composed of three members appointed by the governor. One member shall be a journeyman plumber, one member shall be a person conducting a plumbing business, and one member from the general public who is familiar with the business and trade of plumbing.

(2) The initial terms of the members of the advisory board shall be one, two, and three years respectively as set forth in subsection (1) of this section. Upon the expiration of said terms, the governor shall appoint a new member to serve for a period of three years. In the case of any vacancy on the board for any reason, the governor shall appoint a new member to serve out the term of the person whose position has become vacant.

(3) The advisory board shall carry out all the functions and duties enumerated in this chapter, as well as generally advise the department on all matters relative to this chapter.

(4) Each member of the advisory board shall receive travel expenses in accordance with the provisions of RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for each day in which such member is actually engaged in attendance upon the meetings of the advisory board. [1975-'76 2nd ex.s. c 34 § 56; 1973 1st ex.s. c 175 § 11.]

**Effective date—Severability—**1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

**18.106.130 Plumbing certificate fund.** All moneys received from certificates, permits, or other sources, shall be paid to the state treasurer as ex officio custodian thereof and by him placed in a special fund designated as the "plumbing certificate fund." He shall pay out upon vouchers duly and regularly issued therefor and

approved by the director. The treasurer shall keep an accurate record of payments into said fund, and of all disbursement therefrom. Said fund shall be charged with its pro rata share of the cost of administering said fund. [1973 1st ex.s. c 175 § 13.]

**18.106.140 Powers and duties of director.** The director may promulgate rules, make specific decisions, orders, and rulings, including therein demands and findings, and take other necessary action for the implementation and enforcement of his duties under this chapter: *Provided*, That in the administration of this chapter the director shall not enter any controversy arising over work assignments with respect to the trades involved in the construction industry. [1973 1st ex.s. c 175 § 14.]

**18.106.150 Exemptions from chapter requirements.** Nothing in this chapter shall be construed to require that a person obtain a license or a certified plumber in order to do plumbing work at his residence or farm or place of business or on other property owned by him. Any person performing plumbing work on a farm may do so without having a current certificate of competency or apprentice permit: *Provided, however*, That nothing in this chapter shall be intended to derogate from or dispense with the requirements of any valid plumbing code enacted by a political subdivision of the state, except that no code shall require the holder of a certificate of competency to demonstrate any additional proof of competency or obtain any other license or pay any fee in order to engage in the trade of plumbing: *And provided further*, That this chapter shall not apply to common carriers subject to Part I of the Interstate Commerce Act, nor to their officers and employees: *And provided further*, That nothing in this chapter shall be construed to apply to any farm, business, industrial plant, or corporation doing plumbing work on premises it owns or operates: *And provided further*, That nothing in this chapter shall be construed to restrict the right of any householder to assist or receive assistance from a friend, neighbor, relative or other person when none of the individuals doing such plumbing hold themselves out as engaged in the trade or business of plumbing. [1973 1st ex.s. c 175 § 15.]

**18.106.160 Penalty.** Violation of this chapter or of the department rules and regulations provided for in this chapter by a person, firm, or corporation, shall be punishable by a fine of not more than fifty dollars. Each day of such violation constitutes a separate offense. [1973 1st ex.s. c 175 § 16.]

## Chapter 18.108

### MESSAGE OPERATORS AND BUSINESSES

#### Sections

- 18.108.010 Definitions.
- 18.108.020 State message examining board—Created—Membership—Terms—Vacancies—Powers and duties—Compensation.
- 18.108.030 Massage operator's license required.
- 18.108.040 Advertising practice of massage by unlicensed person unlawful.
- 18.108.050 Exemptions.

- 18.108.060 Massage operator's licenses—Expiration date—Renewal—Fees.
- 18.108.070 Massage operator's licenses—Applicant's qualifications—Examination.
- 18.108.080 Grounds for denial, suspension or revocation of licenses.
- 18.108.090 General penalty.
- 18.108.100 Provisions relating to licensing of persons nonexclusive.
- 18.108.110 Massage business license—Advertising without license unlawful.
- 18.108.120 Massage business license—Required—Hiring unlicensed massage operator prohibited.
- 18.108.130 Exemptions.
- 18.108.140 Massage business license—Expiration—Renewal.
- 18.108.150 Massage business license—Qualifications—Information to be furnished.
- 18.108.160 Massage business license—Fees.
- 18.108.170 Grounds for denial of issuance or renewal of licenses.
- 18.108.180 Inspection of massage premises by director—Reports and information.
- 18.108.190 Inspection of premises by law enforcement personnel.
- 18.108.200 Massage businesses—Rules and regulations.
- 18.108.210 Provisions relating to licensing of massage businesses nonexclusive—Authority of local political subdivisions.
- 18.108.900 Severability—1975 1st ex.s. c 280.

**18.108.010 Definitions.** In this chapter, unless the context otherwise requires, the following meanings shall apply:

- (1) "Board" means the state massage examining board;
- (2) "Massage" means the treatment of the superficial parts of the body, with or without the aid of soaps, oils, or lotions, by rubbing, touching, stroking, tapping, and kneading, provided no attempt be made to adjust or manipulate the articulations of the spine;
- (3) "Massage operator" means a person engaged in the practice of massage;
- (4) "Director" means the director of the department of motor vehicles.
- (5) Massage business means the operation of a business where massages are given. [1975 1st ex.s. c 280 § 1.]

**18.108.020 State massage examining board—Created—Membership—Terms—Vacancies—Powers and duties—Compensation.** The state massage examining board is hereby created. The board shall consist of three members who shall be appointed by the governor for a term of three years each. Each member shall be a resident of this state and shall have not less than three years experience in the practice of massage immediately preceding their appointment and shall be actively engaged in the practice of massage during their incumbency. Within thirty days after September 8, 1975, three members shall be appointed by the governor to serve one, two, and three years respectively. In the event that a member cannot complete his term of office, another appointment shall be made by the governor in accordance with the procedures stated in this section to fill the remainder of the term. No member may serve more than two successive terms and shall qualify and receive a license pursuant to section 7, chapter 280, Laws of 1975 1st ex. sess. within ninety days of their appointment.

Subject to the approval of the director, the board shall have the power to promulgate rules and regulations not

inconsistent with the law and which may be necessary for the performance of its duties. It shall be the duty of the board to pass upon the qualifications of applicants for licenses, prepare the necessary examination questions and practical demonstrations, conduct examinations from time to time in such places as the director designates, and to determine the applicants who successfully passed the examination, and in turn notify the director of such determinations.

Each member of the board shall receive as compensation twenty-five dollars for each day's attendance at meetings of the board. Members shall be reimbursed for travel expenses incurred in the actual performance of their duties, as provided in RCW 43.03.050 and 43.03-.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 57; 1975 1st ex.s. c 280 § 2.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**18.108.030 Massage operator's license required.** No person shall engage in, or hold themselves out as engaged in the practice of massage without a massage operator's license issued by the director. [1975 1st ex.s. c 280 § 3.]

**18.108.040 Advertising practice of massage by unlicensed person unlawful.** It shall be unlawful to advertise the practice of massage by a person not licensed by the director. [1975 1st ex.s. c 280 § 4.]

**18.108.050 Exemptions.** This chapter does not apply to:

- (1) An individual giving massage in their home to members of their immediate family;
- (2) Persons licensed in this state to practice medicine, surgery, drugless therapy, cosmetology, barbering, physical therapy, osteopathy, osteopathy and surgery, chiropractic, podiatry, nursing, or persons working under prescription, supervision, or direction of any such person;
- (3) Massage practiced at the athletic department of any institution maintained by the public funds of the state, or any of its political subdivisions;
- (4) Massage practiced at the athletic department of any school or college accredited by the northwest association of secondary and higher schools. [1975 1st ex.s. c 280 § 5.]

*Exemptions: RCW 18.108.130.*

**18.108.060 Massage operator's licenses—Expiration date—Renewal—Fees.** All licenses issued under the provisions of this chapter, unless otherwise provided shall expire on the annual anniversary date of the individual's date of birth.

Failure to pay the annual license renewal fee by the dates specified above shall render the license invalid, but such license may be reinstated upon written application therefor to the director, and payment to the state of a penalty of ten dollars together with all delinquent annual license renewal fees.

The director shall prorate the licensing fee for massage operator based on one-twelfth of the annual license fee for each full calendar month between the issue date

and the next anniversary of the applicant's birth date, a date used as the expiration date of such license.

Every applicant for a license shall pay an examination fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, which fee shall accompany their application.

Applicants granted a license under this chapter shall pay to the director a license fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, prior to the issuance of their license, and an annual renewal fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. [1975 1st ex.s. c 280 § 6.]

**18.108.070 Massage operator's licenses—Applicant's qualifications—Examination.** The director shall approve issuance of a massage operator license to any applicant who is eighteen years of age or over and who has furnished satisfactory proof of their good character and health and who also has passed a written or oral examination and/or practical demonstration, prepared and conducted by the board establishing their competency and ability to engage in the practice of massage. The examinations shall require the applicant to demonstrate a basic knowledge of anatomy, physiology, hygiene, first aid, and such other subjects as the examining board may determine: *Provided*, That the board shall give an appropriate alternate form of examination for persons who cannot read or speak English to determine equivalent competency. [1975 1st ex.s. c 280 § 7.]

**18.108.080 Grounds for denial, suspension or revocation of licenses.** The director may deny issuance or renewal of any license authorized under this chapter, or suspend or revoke any such license, if the licensee:

(1) Has violated any provision of this chapter, or any rule or regulation of the director adopted pursuant to this chapter;

(2) Has made any false statement or representation to the director in order to induce or prevent action by the director;

(3) Has been convicted of a crime of lewdness or moral turpitude or a crime involving possession, use, or distribution of controlled substances, or has forfeited a bond to appear in court for any of the foregoing offenses. [1975 1st ex.s. c 280 § 9.]

*Grounds for denial, suspension or revocation of licenses: RCW 18.108.170.*

**18.108.090 General penalty.** Any person who violates any of the provisions of this chapter, or the rules and regulations adopted pursuant thereto, shall be guilty of a gross misdemeanor. [1975 1st ex.s. c 280 § 10.]

**18.108.100 Provisions relating to licensing of persons nonexclusive.** The provisions of this chapter relating to the licensing of any person shall not be exclusive, and any political subdivision of the state of Washington within whose jurisdiction the practice of massage is performed may require additional registrations or licenses, regulating the practice of massage or massage operators,

and charge any fee for the same or similar purpose. [1975 1st ex.s. c 280 § 11.]

**18.108.110 Massage business license—Advertising without license unlawful.** It shall be unlawful to advertise the practice of massage by a business not licensed by the director. [1975 1st ex.s. c 280 § 12.]

**18.108.120 Massage business license—Required—Hiring unlicensed massage operator prohibited.** No person shall conduct a massage business without a massage business license issued by the director and, where required, by the political subdivision within whose jurisdiction the massage business is located. No massage business shall hire a massage operator who is not licensed by the director, provided that this requirement shall not become effective until six months after September 8, 1975. [1975 1st ex.s. c 280 § 13.]

**18.108.130 Exemptions.** This chapter does not apply to:

(1) Massage practiced at the athletic department of any institution maintained by the public funds of the state, or any of its political subdivisions;

(2) Massage practiced at the athletic department of any primary or secondary school, or institution of higher education; and

(3) Massage practiced at the athletic department of any nonprofit organization licensed under RCW 66.24.400 and 66.24.450. [1975 1st ex.s. c 280 § 14.]

*Exemptions: RCW 18.108.050.*

**18.108.140 Massage business license—Expiration—Renewal.** Massage business license shall expire annually. Failure to pay the annual license renewal fee shall render the license invalid, but such license may be reinstated upon written application thereof to the director, and payment to the state of a penalty of ten dollars together with all delinquent annual license renewal fees. [1975 1st ex.s. c 280 § 15.]

**18.108.150 Massage business license—Qualifications—Information to be furnished.** The director shall approve issuance of a massage business license to any applicant who supplies the following information:

(1) The name, home address, telephone number, and social security number and birth certificate of the applicant and of all persons named under subsections (3) and (4) of this section; and

(2) The business name, business address and telephone number of the establishment or proposed establishment and a description of the premises on which said business will be conducted; and

(3) The names of all persons owning an interest in such business or proposed business, including any corporate stockholders, and whether such business will be conducted as a sole proprietorship, partnership, or corporation; if a partnership, giving the names of all persons sharing in the profits of said business, and if a corporation giving the names of its officers and directors and the title of each; and



(4) The names of all persons who will act as proprietor, manager, or person in charge of such business or proposed business; and

(5) Evidence that the facilities of the applicant's massage business comply with the standards established by the director. [1975 1st ex.s. c 280 § 16.]

**18.108.160 Massage business license—Fees.** The fee for application for, and renewal of a massage business license shall be determined by the director as provided in RCW 43.24.085 as now or hereafter amended: *Provided*, That only one fee shall be required where an applicant applies for both a license to practice massage and for a business license. [1975 1st ex.s. c 280 § 17.]

**18.108.170 Grounds for denial of issuance or renewal of licenses.** The director may deny issuance or renewal of any license authorized under this chapter, or suspend or revoke any such license, if the licensee:

(1) Has violated any provision of this chapter, or any rule or regulation of the director adopted pursuant to this chapter;

(2) Has made any false statement or representation to the director in order to induce or prevent action by the director;

(3) Has displayed improper, unprofessional, or dishonorable conduct in the operation of his massage business;

(4) Has been convicted of a crime, in connection with the licensee's practice as a massage operator, of lewdness or moral turpitude or possession, use or distribution of a schedule I controlled substance, except marihuana, as defined in RCW 69.50.204, or has forfeited a bond to appear in court for any of the foregoing offenses;

(5) Has failed or refused to qualify for or obtain any business license required by the local political subdivision within whose jurisdiction the massage business is located. [1975 1st ex.s. c 280 § 18.]

*Grounds for denial, suspension or revocation of licenses: RCW 18.108.080.*

**18.108.180 Inspection of massage premises by director—Reports and information.** The director or any of his authorized representatives may at any time visit and inspect the premises of each massage business establishment in order to ascertain whether it is conducted in compliance with the law, including the provisions of this chapter and the rules and regulations of the director. The operator of such massage business shall furnish such reports and information as may be required. [1975 1st ex.s. c 280 § 19.]

**18.108.190 Inspection of premises by law enforcement personnel.** State and local law enforcement personnel shall have the authority to inspect the premises at any time including business hours. [1975 1st ex.s. c 280 § 20.]

**18.108.200 Massage businesses—Rules and regulations.** The director is authorized to promulgate rules and regulations in accordance with chapter 34.04 RCW to carry out the provisions of this chapter relating to the

regulation of massage businesses in this state. [1975 1st ex.s. c 280 § 21.]

**18.108.210 Provisions relating to licensing of massage businesses nonexclusive—Authority of local political subdivisions.** The provisions of this chapter relating to the registration and licensing of any massage business shall not be exclusive and any political subdivision of the state of Washington within whose jurisdiction the massage business is located may require any registrations or licenses, or charge any fee for the same or similar purpose; and nothing herein shall limit or abridge the authority of any political subdivision to levy and collect a general and nondiscriminatory license fee levied upon all businesses, or to levy a tax based upon gross business conducted by any firm within said political subdivision. [1975 1st ex.s. c 280 § 22.]

**18.108.900 Severability—1975 1st ex.s. c 280.** If any provision of this 1975 act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this 1975 act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1975 1st ex.s. c 280 § 23.]



# TITLE 19

## BUSINESS REGULATIONS—MISCELLANEOUS

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#### Chapter 19.04 ANTIFREEZE VENDING

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**19.04.010 Definitions—General.** As used in this chapter, unless the context or subject matter otherwise require: (1) "Antifreeze" shall include all substances and preparations intended for use as the cooling medium, or to be added to the cooling liquid, in the cooling system of internal combustion engines to prevent freezing of the cooling liquid or to lower its freezing point; and (2) "person" shall include individuals, partnerships, corporations, companies and associations. [1949 c 121 § 1; Rem. Supp. 1949 § 8370–300.]

**19.04.020 Adulteration—Defined.** An antifreeze shall be deemed to be adulterated: (1) If it consists in whole or in part of any substance which will render it injurious to the cooling system of an internal combustion engine or will make the operation of the engine dangerous to the user; or (2) if its strength, quality, or purity falls below the standard of strength, quality, or purity under which it is sold. [1949 c 121 § 2; Rem. Supp. 1949 § 8370–301.]

**19.04.030 Misbranding—Defined.** An antifreeze shall be deemed to be misbranded: (1) If its labeling is false or misleading in any particular; or (2) if in package form it does not bear a label containing the name and place of business of the manufacturer or distributor and an accurate statement of the quantity of the contents in terms of weight or measure on the outside of the package. [1949 c 121 § 3; Rem. Supp. 1949 § 8370–302.]

*Brands and marks, crimes relating to: Chapter 9.16 RCW.*

**19.04.040 Annual inspection—Fee—Permit.** Before any antifreeze shall be sold, offered for sale, or held with intent to sell within this state, a sample thereof must be inspected annually by the department of agriculture. Upon application of the manufacturer or distributor and the payment of a fee of twenty dollars for each brand of antifreeze submitted, the department shall inspect the antifreeze submitted. If the antifreeze is not adulterated or misbranded, if it meets the standards of the department, and is not in violation of this chapter, the department shall give the applicant a written permit authorizing the sale of such antifreeze in this state for the calendar year in which the inspection fee is paid. It shall be unlawful to keep with intent to sell, to offer to sell or to sell adulterated or misbranded antifreeze or any antifreeze for which a license shall not previously have been obtained. [1949 c 121 § 4; Rem. Supp. 1949 § 8370–303.]

**19.04.050 Duties of department of agriculture.** The department of agriculture shall enforce the provisions of this chapter by inspections, chemical analyses, or any other appropriate methods. All samples for inspection or analysis shall be taken from stocks in the state or intended for sale in the state. The department through its agents may call upon the manufacturer or distributor applying for an inspection of an antifreeze to supply such samples thereof for analysis. The department, through its agents, shall have free access by legal means during business hours to all places of business, buildings, vehicles, cars, and vessels used in the manufacture, transportation, sale, or storage of any antifreeze, and it may open by legal means any box, carton, parcel, or package, containing or supposed to contain any antifreeze and may take therefrom samples for analysis. [1949 c 121 § 5; Rem. Supp. 1949 § 8370–304.]

*Obstructing public officer: Chapter 9A.76 RCW.*

**19.04.060 Rules and regulations—Standards.** The department of agriculture shall have authority to promulgate such rules and regulations as are necessary to promptly and effectively enforce the provisions of this chapter. The department may at its discretion establish minimum requirements and standards of quality for antifreeze. [1949 c 121 § 6; Rem. Supp. 1949 § 8370–305.]

**19.04.070 List of approved brands and trademarks.** The department of agriculture may furnish upon request a list of the brands and trademarks of antifreeze inspected by the department during the calendar year

which have been found to be in accord with this chapter. [1949 c 121 § 7; Rem. Supp. 1949 § 8370-306.]

**19.04.080 Restriction upon advertising product.** No advertising literature relating to any antifreeze sold or to be sold in this state shall contain any statement that the antifreeze advertised for sale has been approved by the department of agriculture; but if any antifreeze has been inspected by the department and found to meet the standards of the department and not to be in violation of this chapter such statement may be contained in any advertisement literature whenever such brand or trademark of antifreeze is being advertised for sale. [1949 c 121 § 8; Rem. Supp. 1949 § 8370-307.]

**19.04.090 Prosecutions.** It shall be the duty of the prosecuting attorneys of the several counties to institute criminal proceedings against any person or persons having violated any provisions of this chapter, or any rule or regulation of the department of agriculture hereunder promulgated. [1949 c 121 § 9; Rem. Supp. 1949 § 8370-308.]

**19.04.100 Collection and disposition of fees.** All fees provided for in this chapter shall be collected by the director of the department of agriculture and remitted to the state treasurer. [1949 c 121 § 10; Rem. Supp. 1949 § 8370-309.]

**19.04.110 Penalty.** Any person violating or failing to comply with any of the provisions of this chapter or any rule, regulation, definition, or standard of quality issued pursuant hereto is guilty of a gross misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars, or by imprisonment for not less than ten days and not more than thirty days, or by both fine and imprisonment. [1949 c 121 § 11; Rem. Supp. 1949 § 8370-310.]

**Chapter 19.06**

**BLIND MADE PRODUCTS—SERVICES**

Sections

- 19.06.010 Labels—Contents—Requirements—Prohibited acts.
- 19.06.020 Governmental agencies shall purchase goods and services—Conditions.
- 19.06.030 Advertising limitations.
- 19.06.040 Penalty.

**19.06.010 Labels—Contents—Requirements—Prohibited acts.** Products made by blind persons and sold or distributed in this state as blind made may bear a label affixed directly to the product reading "MADE BY THE BLIND" and shall show the distributor's or manufacturer's name. Any product bearing such label shall have been made by blind people to the extent of at least seventy-five percent of the man hours required for its manufacture. No other label, trade name or sales device tending to create the impression that a product is made by blind persons shall be used in connection with the sale or distribution of such product unless the product shall have been made by blind people to the extent of at least seventy-five percent of the man

hours required for its manufacture. [1961 c 56 § 1; 1959 c 100 § 1.]

**19.06.020 Governmental agencies shall purchase goods and services—Conditions.** Any board, commission, officer, employee or other person or persons of the state, or any county, city, town, school district or other agency, political subdivision or taxing district of the state, whose duty it is to purchase materials, supplies, goods, wares, merchandise or produce, or to procure services, for the use of any department or institution within the state, shall make such purchases and procure such services whenever available, from any nonprofit agency for the blind located within the state which manufactures or distributes blind made products: *Provided*, That the goods and services made by or offered by such agencies shall be equal in quality and price to those available from other sources. [1961 c 56 § 4; 1959 c 100 § 2.]

**19.06.030 Advertising limitations.** No advertising of blind made products shall refer to any product which is not blind made, nor shall any such advertising contain or refer to names or pictures of any blind persons or otherwise exploit the blind. [1961 c 56 § 2.]

**19.06.040 Penalty.** Any violation of this chapter shall be a misdemeanor. [1961 c 56 § 3.]

**Chapter 19.08  
CASCARA BARK PEELING**

Sections

- 19.08.010 Permit to take or dispose of cascara bark.
- 19.08.020 Requirements for cutting or peeling—Protection of trees.
- 19.08.030 Penalties.

*Cutting or destroying trees: RCW 76.04.397.*

*Malicious injury to property: Chapter 9A.48 RCW.*

*Specialized forest products, cascara bark included: RCW 76.48.020.*

**19.08.010 Permit to take or dispose of cascara bark.** It shall be unlawful for any person, firm or corporation to cut, peel, sell, ship or otherwise dispose of any cascara bark unless the person, firm or corporation cutting the same shall secure a written permit from the legal owner of the land upon which such cascara bark is cut or peeled. In the case of any state land the written permit shall be secured from the commissioner of public lands. Where the cascara bark is cut or peeled by a person who is the owner of the land from which such cascara bark is cut or peeled, such owner shall supply the permit hereinafter provided for. Such permit shall describe the land by legal description. [1943 c 129 § 1; Rem. Supp. 1943 § 2875-1.]

**19.08.020 Requirements for cutting or peeling—Protection of trees.** Any person, firm or corporation cutting or peeling any cascara bark upon the land of another shall observe the following requirements:

- (1) All trees must be felled prior to peeling.
- (2) No trees of less than three inches in diameter may be fallen, cut or peeled.

(3) Peeling must be carried on consistently and currently within each stand, group of trees or cutting area as may be indicated by the legal owner or commissioner of public lands.

(4) Stumps must be left at least six inches in height above the ground and no bark is to be injured or removed from the stump.

(5) All limbs and branches must be peeled down to a diameter of one and one-half inches or less.

(6) Where trees grow from a common source, such as an old stump or root, the falling, cutting and peeling practice shall be such as will provide for all trees three inches in diameter or less to be left without injury.

(7) Special efforts must be made to prevent injury to small sprouts growing below the stump line.

(8) In peeling or taking such bark, he, they or it shall take every precaution against the start or spread of fire, and, when required so to do by the owner or the commissioner of public lands, shall keep and maintain on the premises such fire fighting equipment as they shall prescribe. [1943 c 129 § 2; Rem. Supp. 1949 § 2875-2.]

*Fire, crimes relating to: Chapter 9A.48 RCW.*

*Specialized forest products: Chapter 76.48 RCW.*

**19.08.030 Penalties.** Any violation of the provisions of this chapter shall constitute a misdemeanor. [1943 c 129 § 3; Rem. Supp. 1943 § 2875-3.]

### Chapter 19.09 CHARITABLE SOLICITATIONS

#### Sections

19.09.010	Purpose.
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19.09.080	Registration statement—Signing—Duration—Renewals.
19.09.090	Subsidiary organizations.
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19.09.910	Severability—1973 1st ex.s. c 13.

**19.09.010 Purpose.** The purpose of this chapter is to protect the general public and public charity in the state of Washington; to require full public disclosure of facts relating to persons and organizations who solicit funds from the public for public charitable purposes, the purposes for which such funds are solicited, and their actual uses; and to prevent deceptive and dishonest statements and conduct in the solicitation of funds for or in the name of charity. [1973 1st ex.s. c 13 § 1.]

**19.09.020 Definitions.** When used in this chapter, unless the context otherwise requires:

(1) "Charitable organization" means: (a) Any benevolent, philanthropic, patriotic, eleemosynary, education, social, recreation, fraternal organization, or any other person having or purporting to have a charitable nature; and (b) which solicits or solicits and collects contributions for any charitable purpose. "Charitable" shall have its common law meaning unless the context in which it is used clearly requires a narrower or a broader meaning.

(2) "Contribution" means the donation, promise or grant, for consideration or otherwise, of any money or property of any kind or value which contribution is wholly or partly induced by a solicitation. Reference to dollar amounts of "contributions" or "solicitations" in this chapter means in the case of payments or promises to pay for merchandise or rights of any description, the value of the total amount paid or promised to be paid for such merchandise or rights, and not merely that portion of the purchase price to be applied to a charitable purpose.

(3) "Compensation" means salaries, wages, fees, commissions, or any other remuneration or valuable consideration.

(4) "Cost of solicitation" means and includes all costs, expenditures, debts, obligations, salaries, wages, commissions, fees, or other money or thing of value paid or incurred in making a solicitation for a direct gift or conducting a sale or benefit affair.

(5) "Director" means the director of the department of motor vehicles.

(6) "Direct gift" shall mean and include an outright contribution of food, clothing, money, credit, property, financial assistance or other thing of value to be used for a charitable or religious purpose and for which the donor receives no consideration or thing of value in return.

(7) "Parent organization" means that part of a charitable organization which coordinates, supervises, or exercises control over policy, fund raising, or expenditures, or assists or advises one or more chapters, branches, or affiliates of such organization in the state of Washington.

(8) "Person" means an individual, organization, group, association, partnership, corporation, or any combination thereof.

(9) "Professional fund raiser" means any person who, for compensation, plans, conducts, or manages any drive or campaign in this state for the purpose of soliciting contributions for or on behalf of any charitable organization or charitable purpose, or who engages in the business of or holds himself out to persons in this state as independently engaged in the business of soliciting contributions for such purposes, or the business of planning, conducting, managing, or carrying on any drive or campaign in this state for such solicitations: *Provided*, That the following persons shall not be deemed professional fund raisers or professional solicitors: (a) Bona fide officer or employee of a charitable organization which maintains a permanent establishment in the state of Washington; who is employed and engaged as such officer or employee principally in connection with activities other than soliciting contributions or managing the solicitation of contributions and whose salary or other compensation is not computed on funds raised or to be raised; (b) a clergyman of a religious corporation exempt under the provisions of RCW 19.09.030.

(10) A "professional solicitor" means a person other than a professional fund raiser who is employed for compensation by any person or charitable organization to solicit contributions for charitable purposes from persons in this state.

(11) "Sale and benefit affair" shall mean and include, but not be limited to, athletic or sports event, bazaar, benefit, campaign, circus, contest, dance, drive, entertainment, exhibition, exposition, party, performance, picnic, sale, social gathering, theater, or variety show which the public is requested to patronize or attend or to which the public is requested to make a contribution for any charitable or religious purpose connected therewith.

(12) "Solicitation" means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which:

(a) Any appeal is made for any charitable purpose; or

(b) The name of any charitable organization is used as an inducement for consummating the sale; or

(c) Any statement is made which implies that the whole or any part of the proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization.

The solicitation shall be deemed completed when made, whether or not the person making it receives any contribution or makes any sale. [1974 ex.s. c 106 § 1; 1973 1st ex.s. c 13 § 2.]

**19.09.030 Exemptions.** Except as otherwise specifically provided in other sections of this chapter, this chapter shall not apply to the following:

(1) Solicitations by religious corporations duly organized and operated in good faith as religious organizations which are entitled to receive a declaration of current tax exempt status from the government of the United States and their duly organized branches or chapters, if the solicitations by such organization are

conducted among the members thereof by other members or officers thereof, voluntarily or if the solicitations are in the form of collections or contributions at the regular or special religious assemblies, meetings, or services of any such organization or solicitations by such organizations for evangelical, missionary, or religious purposes.

(2) Any organizations which are organized and operated principally for charitable or religious or educational purposes, other than the raising of funds, when the solicitation of contributions is confined to the membership of the organization and when the solicitation is managed and conducted solely by officers and members of such organizations who are unpaid for such services.

The term "membership" shall not include those persons who are granted membership upon making a contribution as the result of a solicitation.

(3) Persons requesting any contributions for the relief of named individuals:

(a) When the solicitation is managed and conducted solely by persons who are unpaid for such services and;

(b) When the contributions collected do not exceed the five thousand dollars in any six month period; and

(c) When all of the contributions collected, without any deductions whatsoever except for the actual cost of a banquet, dance, or similar social gathering, are turned over to the named beneficiary or beneficiaries.

(4) Any charitable organization which does not solicit and collect contributions in this state in excess of five thousand dollars in any six month period if all such fund raising functions are carried on by persons who are unpaid for their services. [1974 ex.s. c 106 § 2; 1973 1st ex.s. c 13 § 3.]

**19.09.040 Organization ceasing to be exempt—Registration.** Any charitable organization which ceases to be exempt under the provisions of RCW 19.09.030 shall register, within thirty days after the date the charitable organization ceases to be exempt, with the director as required under RCW 19.09.060. [1973 1st ex.s. c 13 § 4.]

**19.09.050 Professional fund raisers not exempt.** A professional fund raiser is not exempted from any provision of this chapter solely by reason of his acting for an organization exempted under the provisions of RCW 19.09.030. [1973 1st ex.s. c 13 § 5.]

**19.09.060 Registration—Required.** Except as otherwise provided in this chapter, no person may solicit contributions on behalf of any charitable organization from persons in this state by any means whatsoever prior to the time the charitable organization is registered in accordance with this chapter. [1973 1st ex.s. c 13 § 6.]

**19.09.070 Application for registration—Filing—Contents—Requirements.** An application for registration of a charitable organization, as provided by RCW 19.09.060, shall be filed as prescribed by rules and regulations which the director may adopt and shall contain the following documents and information:



(1) The name of the charitable organization and the name under which it intends to solicit contributions;

(2) The addresses of all offices, if any, maintained by the charitable organization in the state of Washington and the names and addresses of its chapters, branches, and affiliates in this state;

(3) The names and addresses of its directors, trustees, and other officers and key personnel. The term "key personnel" means: (a) Any officers, employees, or other personnel who are directly in charge of any of the fund-raising activities of the charitable organization; and (b) the officers or individuals maintaining custody of the organization's financial records and the officers or individuals who will have custody of the contributions;

(4) The location of the organization's financial records in the state of Washington;

(5) Methods by which solicitation will be made, including a statement as to whether such solicitation is to be conducted by voluntary unpaid solicitors, by paid solicitors, or both, and a narrative description of the promotional plan together with copies of all advertising material which has been prepared for public distribution by any means of communication and any location of any telephone solicitation facilities;

(6) The names and addresses of any professional fund raisers and professional solicitors who are acting or who have agreed to act on behalf of the charitable organization together with a statement setting forth the terms of the arrangements for salaries, bonuses, commissions, or other remuneration to be paid the professional fund raisers and professional solicitors;

(7) The general purpose for which the charitable organization is organized;

(8) Where and when the organization was legally established, the form of its organization, and its federal tax exempt status;

(9) The purposes for which the contributions to be solicited will be used, the total amount of funds proposed to be raised thereby, and the use or disposition to be made of any receipts therefrom;

(10) The period of time during which the solicitation will be made and if less than state-wide, the area or areas in which such solicitation will generally take place;

(11) A financial statement of any funds collected for charitable purposes by the applicant for the last preceding fiscal year. Said statement giving the amount of money so raised together with the cost of solicitations and final distribution of the balance. The financial statement shall be submitted on a uniform reporting form provided by the director;

(12) An irrevocable appointment of the director to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or his personal representative;

(13) Whether the organization is authorized by any other governmental authority to solicit contributions and whether it is or has ever been enjoined by any court from soliciting contributions;

(14) Such other information as may be reasonably required, by the director, in the public interest or for the protection of contributors.

If there is any change, while any application is pending, in fact, policy, or method that would alter the information given in the application, the applicant shall notify the director in writing thereof within five days, excluding Saturdays, Sundays and legal holidays after such change. [1973 1st ex.s. c 13 § 7.]

**19.09.080 Registration statement—Signing—Duration—Renewals.** The registration statement, and any other documents prescribed by the director, shall be signed under oath by the president, or other authorized officer, and the chief fiscal officer of the charitable organization. Such registration shall be effective for the period requested by the charitable organization in its registration statement but such period shall not exceed one year. The director may adopt regulations providing for the annual renewal of registrations by charitable organizations having continuing or annually recurring fund raising campaigns. Renewals shall be accompanied by such information as may be required to bring the registration statement up to date. [1973 1st ex.s. c 13 § 8.]

**19.09.090 Subsidiary organizations.** Where any chapter, branch, affiliate, or area division of a charitable organization is supervised and controlled by a superior or parent organization which is incorporated, qualified to do business, or doing business within this state such chapter, branch, affiliate, or area division shall not be required to register under RCW 19.09.060 if the superior or parent organization files a registration statement, on behalf of its subsidiary, in addition to or as a part of its own registration statement. Where a registration statement has been filed by a superior or parent organization, on behalf of such subsidiary organization, it shall file any reports required of the subsidiary organization, under this chapter, in addition to or as part of its own report, but the accounting information so required shall be set forth separately and not in consolidated form with respect to every such chapter, branch, affiliate, or division which solicits, collects, or expends more than four thousand dollars in any fiscal year. [1973 1st ex.s. c 13 § 9.]

**19.09.100 Examination by director—Limitations on costs of solicitations—Other requirements.** Upon receipt of an application in the proper form for registration, the director shall immediately initiate an examination to determine that:

(1) The cost of solicitation for direct gifts shall not exceed twenty percent of the total gross amount to be raised or for sale and benefit affairs shall not exceed fifty-five percent of the total gross amount to be raised; and of this fifty-five percent, not more than twenty percent shall be paid for all wages, fees, commissions, salaries, and emoluments paid or to be paid to all salesmen, solicitors, collectors, and professional fund raisers. If it appears that the cost of soliciting will exceed the percentages listed above, and except for that, the registration would otherwise be granted, the director may enter an order registering the charitable organization, upon a showing that special reasons make a cost higher than

twenty percent or said fifty-five percent, or said twenty percent, respectively, reasonable in the particular case. When such an order is entered, the amount, stated as a percentage of the total purchase price, that will be given to the charitable organization or purpose shall be disclosed to each person being solicited at the time of each solicitation by conspicuously setting out such cost upon the item of goods, or upon its package, or by conspicuously setting out such cost upon a sign posted at each location where such solicitation occurs;

(2) The charitable organization has complied with all local governmental regulations which apply to soliciting for or on behalf of charitable organizations;

(3) The advertising material and the general promotional plan are not false, misleading, or deceptive and its rules and regulations, which the director may adopt, comply with the standards prescribed by the director and which afford full and fair disclosure;

(4) The charitable organization has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime involving solicitations for or on behalf of a charitable organization in this state, the United States, or any other state or foreign country within the past ten years and has not been subject to any permanent injunction or administrative order or judgment, under the provisions of RCW 19.86.080 or 19.86.090, involving a violation or violations of the provisions of RCW 19.86.020, within the past ten years, or of restraining a false or misleading promotional plan involving solicitations for charitable organizations. [1974 ex.s. c 106 § 3; 1973 1st ex.s. c 13 § 10.]

**19.09.110 Registration or rejection—Order—Procedure.** (1) Upon receipt of the application for registration, in proper form, the director shall issue a notice of filing to the applicant. Within thirty days from the date of the notice of filing, the director shall enter an order registering the charitable organization or rejecting the registration. If no order of rejection is entered within thirty days from the date of notice of filing, the charitable organization shall be deemed registered unless the applicant has consented, in writing, to a delay.

(2) If the director affirmatively determines, upon inquiry and examination that the requirements of RCW 19.09.100 have been met he shall enter an order registering the charitable organization.

(3) If the director determines, upon inquiry and examination, that any of the requirements of RCW 19.09.100 have not been met, the director shall notify the applicant that the application for registration must be corrected in the deficiencies specified. If the requested corrections are not complied with, the director shall enter an order rejecting the registration, such order shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty days during which time the applicant may petition for reconsideration and shall be entitled to a hearing. [1973 1st ex.s. c 13 § 11.]

**19.09.120 Notice of intention to solicit—Short form report.** (1) Any charitable organization mentioned under RCW 19.09.030(4):

(a) Before conducting any solicitation give written notice to the director stating its intention to solicit funds, the basis of its exemption, the purpose of such solicitation, the approximate percentage of collections, after deductions for expenses, to be actually devoted to that purpose, and when and in what area or areas such solicitation will be conducted. Written notice shall be given to the director by the organization, or by someone in its behalf, at least three days in advance of such solicitation, and if it is sent by registered or certified mail such notice shall be deemed given when deposited in the United States mail. The notice requirement of this section shall constitute a registration statement which shall be construed as registration under the provisions of this chapter.

(b) In the event that any organization, under this section, solicits and collects funds in excess of fifteen hundred dollars during any year, such organization shall file a short form report conforming to the provisions of RCW 19.09.130. The director may require the furnishing of any further details as may be necessary for complete reporting and disclosure within the purposes of this section.

(2) No fees shall be collected in connection with any notice, registration, or report filed under this section. [1974 ex.s. c 106 § 4; 1973 1st ex.s. c 13 § 12.]

**19.09.130 Short form report—Form—Requirements.** (1) When the filing of a short form report is required, the form of the report shall be substantially as follows:

**CHARITABLE SOLICITATIONS  
SHORT FORM REPORT**

Name of Organization -----  
Period Covered by This Report -----  
Gross Amount of Funds Collected for  
Each Purpose (list each purpose and  
amount separately) -----  
Gross Amount of Additional Funds  
Pledged for Each Purpose -----  
Amount Applied to Each Purpose for  
Which Collected -----  
Additional Amount (if any) to be  
Applied for Each Purpose -----  
Amount Expended and to be Expended  
for Expenses of Solicitation -----

-----  
(Signature and business  
address of party signing)

(2) The short form report shall be signed by the officer or employee who regularly keeps the books or records of the organization. The signature shall be a certification of the correctness of the report. The report shall be filed with the director by the organization required to file the same within ninety days after the close of its fiscal year. [1973 1st ex.s. c 13 § 13.]

**19.09.140 Registration to be kept current—Amendments.** A registration filed with the director by a charitable organization, under the provisions of this

chapter, shall be kept current during its effective term by the charitable organization, professional fund raiser, or professional solicitor. Such current status shall be maintained by the filing of amendments with the director, in the form prescribed by him, within ten days after any material change in the information previously furnished to the director.

The following changes shall be construed as material for the purposes of this section:

- (1) Any change in the name of the organization.
- (2) Any addition or substitution in the names of its salaried or otherwise compensated directors, trustees, other officers, key personnel, or professional fund raisers; or any change in the reported addresses or duties of the officers or individuals who keep the records or are in custody of the contributions.
- (3) Any change, amounting to five percent or more, in the remuneration to be paid to any professional fund raisers or professional solicitors.
- (4) Any change in the general purposes of the organization, intended use of the contributions, or period of time for solicitation, or general areas in which such solicitation was to take place or telephone solicitation facilities.
- (5) Any change in other facts which are declared material by rule or regulation of the director. [1973 1st ex.s. c 13 § 14.]

**19.09.150 Register.** The director shall establish and maintain a register or registers of charitable organizations and persons who have registered under this chapter. [1973 1st ex.s. c 13 § 15.]

**19.09.160 Registration not endorsement.** Registration under this chapter shall not be deemed to constitute endorsement, by the state of Washington, of any charitable organization so registered and no person or charitable organization shall intentionally claim or infer, directly or indirectly any such endorsement by reason of its registration. [1973 1st ex.s. c 13 § 16.]

**19.09.170 Registration and information public records.** The registration and all information, documents, and reports filed with the director under this chapter are matters of public record and shall be, subject to reasonable regulation, open to public inspection. [1973 1st ex.s. c 13 § 17.]

**19.09.180 Identification card.** Every person soliciting contributions for or on behalf of a charitable organization which is required to file or have filed in its behalf a registration statement, under this chapter, shall have readily available for prospective contributors an identification card which shall include the following information in legible form:

- (1) The name of the charitable organization for which the contributions are solicited.
- (2) A statement that the charitable organization has filed a registration statement with the director and the date such registration was filed.
- (3) Such other information, from the registration statement, as may be required by reasonable rule or

regulation of the director for the protection of the public.

The director may prescribe the form of such identification card. The card shall be exhibited to any person from whom a contribution is requested or, on demand, to any police or law enforcement officer. [1973 1st ex.s. c 13 § 18.]

**19.09.190 Professional fund raisers or solicitors—Registration—Duration—Surety bond.** Every person employed or retained as a professional fund raiser or professional solicitor by or for a charitable organization shall file with the director a valid registration or renewal of such registration. Applications for such registration shall be in writing, under oath, and in the form prescribed by the director. The form shall require information as to the identity and previous related activities of the registrant as may be necessary or appropriate for the public interest or for the protection of contributors. In addition, a professional fund raiser shall file, at the time of making application, with and have approved by the director a surety bond executed by the applicant as principal in the amount of five thousand dollars with one or more sureties whose liability in the aggregate as such sureties will at least equal the said sum. The bond shall run to the director for the use of the state and to any person who may have a cause of action against the obligor of said bond for any malfeasance or misfeasance in the conduct of such solicitation. Registration, when effected, shall be for a period of one year, or any part thereof, expiring on the last day of December and may be renewed for additional periods unless rejected for legally sufficient cause or for failure to file the bond prescribed in this section. The additional periods shall be for not more than one calendar year or such shorter period as the director may prescribe by regulation. [1973 1st ex.s. c 13 § 19.]

**19.09.200 Books, records and contracts.** Charitable organizations and professional fund raisers, required to be registered under this chapter, shall maintain accurate, current, and readily available books and records at their usual business locations, as designated in the registration statement filed with the director, until at least three years shall have elapsed following the effective period to which they relate.

All contracts between professional fund raisers and charitable organizations shall be in writing and true and correct copies of such contracts or records thereof shall be kept on file in the various offices of the charitable organization and/or professional fund raiser for a three-year period as provided in this section. Such records and contracts shall be available for inspection and examination by the director. A copy of such contract or record shall be mailed to or filed with the director by the charitable organization or professional fund raiser, within ten days, following receipt of a written demand therefor from the director. [1973 1st ex.s. c 13 § 20.]

**19.09.210 Financial statements—Special reports.** (a) Within ninety days following the close of its fiscal year every charitable organization which is required to

file a registration statement under RCW 19.09.060 and which has received contributions during the previous fiscal year shall file with the director a financial statement containing, but not limited to, the following information:

(1) The gross amount of the contributions pledged and the gross amount collected.

(2) The amount thereof, given or to be given to charitable purposes represented together with details as to the manner of distribution as may be required either by general rule or by specific written request of the director.

(3) The aggregate amount paid and to be paid for the expenses of such solicitation.

(4) The amounts paid to and to be paid to professional fund raisers and solicitors.

(5) Copies of any annual or periodic reports furnished by the charitable organization, of its activities during or for the same fiscal period, to its parent organization, subsidiaries, or affiliates, if any.

(b) The director may prescribe such forms as may be necessary or convenient for the furnishing of such information. In addition, the director may require that within thirty days after the close of any special period of solicitation the charitable organization conducting such solicitation shall file a special report containing the information specified in this section for such special period of solicitation. [1975 1st ex.s. c 219 § 1; 1973 1st ex.s. c 13 § 21.]

**19.09.220 Suspension of registration—Failure to file financial statement or report—Examination.** (1) If it appears to the director, at any time, that any organization has failed to comply with any requirement of RCW 19.09.210 or failed to file any required report, the director following notice, and after an opportunity for a hearing (at a time fixed by the director) within fifteen days after such notice, shall issue an order suspending the registration. When such requirement has been fulfilled or the information has been filed in accordance with such order, the director shall so declare and thereupon the order shall cease to be effective.

(2) The director is hereby empowered to make an examination in any case to determine whether an order should issue under subsection (1) of this section. In making such examination the director, or his designee, shall have access to, and may demand the production of any books and papers of, and may administer oaths and affirmations to, and may examine the charitable organization, any agents, or any other person, in respect to any matter relevant to the examination. If the charitable organization or any agents shall fail to cooperate or shall obstruct or refuse to permit the making of an examination such conduct shall be proper grounds for the issuance of an order suspending the registration. [1973 1st ex.s. c 13 § 22.]

**19.09.230 Using the name of another person.** No person who is required to register under this chapter shall knowingly use the name of any other person for the purpose of soliciting contributions from persons in this state without the written consent of such other person: *Provided*, That such consent may be deemed to have been given by anyone who is a director, trustee, other

officer, employee, agent, professional fund raiser, or professional solicitor of such person registering under this chapter.

A person may be deemed to have used the name of another person for the purpose of soliciting contributions if such latter person's name is listed on any stationery, advertisement, brochure, or correspondence of the charitable organization or person or if such name is listed or represented to any one who has contributed to, sponsored, or endorsed the charitable organization or person, or its or his activities. [1973 1st ex.s. c 13 § 23.]

**19.09.240 Using similar name, symbol or statement.** No charitable organization, professional fund raiser, or other person soliciting contributions for or on behalf of a charitable organization shall use a name, symbol, or statement so closely related or similar to that used by another charitable organization or governmental agency that the use thereof would tend to confuse or mislead the public. [1973 1st ex.s. c 13 § 24.]

**19.09.250 Advertising violations—Procedure.** No person shall publish any advertisement, in this state, with respect to a charity, which is subject to the registration requirements of this chapter, following the director's determination that such advertisement contains statements that are false, misleading, or deceptive and so notifies the person in writing. Such notification may be given summarily without notice or hearing. At any time after the issuance of a notification under this section the person desiring to use the advertisement may, in writing, request the order be rescinded. Upon receipt of a written request the matter shall be set for a hearing to commence within fourteen days following receipt of the request unless the person making the request consents to a later date. Following such hearing, which shall be conducted in accordance with the provisions of the Administrative Procedure Act, chapter 34.04 RCW, the director shall determine whether to affirm and continue or to rescind such order pursuant to the powers granted under such act. [1973 1st ex.s. c 13 § 25.]

**19.09.260 Investigations—Powers and duties of director.** (1) The director may:

(a) Make necessary public or private investigations within or without the state to determine whether any person has violated or is about to violate this chapter or any rule, regulation, or order hereunder, or to aid in the enforcement of this chapter, or in the prescribing of rules and forms hereunder;

(b) Require or permit any person to file a statement in writing, under oath or otherwise as the director determines, as to all facts and circumstances concerning the matter to be investigated.

(2) For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by rule may administer oaths or affirmations and upon the director's own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter

which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things together with the identity and location of persons having knowledge, relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer, and upon reasonable notice to all persons affected thereby, the director may apply to the superior court for an order compelling compliance.

(4) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Procedure Act, chapter 34.04 RCW. [1973 1st ex.s. c 13 § 26.]

**19.09.270 Violations—Cease and desist orders—Injunctions.** (1) If the director determines following notice and hearing that a person has:

- (a) Violated any provision of this chapter;
- (b) Directly or through an agent or employee engaged in any false, deceptive, or misleading advertising, promotional, or sales methods in soliciting for a charitable organization;
- (c) Made any substantial change in the method of solicitation or promotional plan subsequent to the order of registration without obtaining prior written approval from the director;
- (d) Made any solicitation for or on the behalf of any charitable organization required to be registered under this chapter which has not been so registered with the director;
- (e) Violated any lawful order, rule, or regulation of the director;
- (f) He may issue an order requiring the person to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the director will carry out the purposes of this chapter.

(2) If the director makes a finding of fact, in writing, that the public interest will be irreparably harmed by delay in issuing an order, he may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the director whenever possible shall give notice, by telephone or otherwise, of the proposal to issue a temporary cease and desist order to the person to whom it should be directed. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held to determine whether or not the order becomes permanent.

(3) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, or a rule or order hereunder, the director, with or without prior administrative proceedings, may bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or any rule, regulation, or order hereunder. Upon proper showing injunctive relief or temporary restraining orders shall be granted and a receiver or conservator may be appointed. The director is not required to post a bond in any court proceedings. [1973 1st ex.s. c 13 § 27.]

**19.09.280 Revocation of registration—Grounds—Cease and desist order as alternative.** (1) A registration may be revoked, following notice and hearing, upon a written finding of fact that the charitable organization, professional fund raiser or professional solicitor has:

- (a) Failed to comply with the terms of a cease and desist order;
- (b) Been convicted in any court, subsequent to the filing of the application for registration, for a crime involving fraud, deception, false pretense, misrepresentation, false advertising, or dishonest dealing in charity solicitation;
- (c) Failed to faithfully perform any stipulation or agreement made with the director as an inducement to grant any registration or to reinstate any registration or to approve any promotional plan or method of solicitation;
- (d) Made intentional misrepresentations or concealed material facts in an application for registration.

Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(2) If the director finds, following notice and hearing, that the charitable organization, professional fund raiser or professional solicitor has been guilty of a violation for which revocation could be ordered, he may issue a cease and desist order instead. [1973 1st ex.s. c 13 § 28.]

**19.09.290 Suits by or against charitable organization—Notice.** In any suit by or against a charitable organization such charitable organization shall promptly furnish the director notice of the suit and copies of all pleadings. This section shall not apply where the director is a party to the suit. [1973 1st ex.s. c 13 § 29.]

**19.09.300 Judicial review.** Proceedings for judicial review shall be in accordance with the provisions of the Administrative Procedure Act, chapter 34.04 RCW. [1973 1st ex.s. c 13 § 30.]

**19.09.310 Rules and regulations.** The director shall prescribe reasonable rules and regulations in order to implement this chapter and such rules and regulations shall be adopted, amended, or repealed in compliance with the Administrative Procedure Act, chapter 34.04 RCW. [1973 1st ex.s. c 13 § 31.]

**19.09.320 Additional powers and duties of director.** In addition to the powers granted the director under other sections of this chapter, the director shall have the powers prescribed under this section. The director may:

- (1) Intervene in a suit involving a charitable organization registered under this chapter;
- (2) Bring legal action in the superior court to recover any money collected in violation of this chapter. In the event the director recovers any amount under this section, the court shall as part of its judgment direct the manner in which the amount shall be applied. In so doing the court shall order the director to pay such amount to a reputable charitable organization, which in the court's opinion has charitable purposes similar to or

identical with the proclaimed purposes of the organization or person which had solicited and collected the amount. The court may in its discretion award reasonable attorney's fees to the state out of any funds so recovered.

(3) Accept information contained in registrations filed in other states;

(4) Contract with similar agencies in this state, any other state, or with the federal government to perform investigative functions;

(5) Accept grants-in-aid from any source;

(6) Cooperate with similar agencies in this state, any other state, and with the federal government to establish, insofar as practical, uniform filing procedures and forms, uniform public offering statements, advertising standards, rules, and common administrative practices. [1973 1st ex.s. c 13 § 32.]

**19.09.330 Local codes, ordinances, and regulations.** This chapter does not annul, alter, affect, or exempt any person from complying with the applicable provisions of all municipal and county codes, ordinances, and regulations except to the extent that those municipal and county codes, ordinances, and regulations are inconsistent with any provision of this chapter and then only to the extent of the inconsistency. [1973 1st ex.s. c 13 § 33.]

**19.09.340 Violations deemed unfair practice under chapter 19.86 RCW—Procedure.** (1) The commission by any person of an act or practice prohibited by this chapter is hereby declared to be an unfair act or practice or unfair method of competition in the conduct of trade or commerce for the purpose of application of the Consumer Protection Act, chapter 19.86 RCW.

(2) The director may refer such evidence, as may be available to him, concerning violations of this chapter, or of any rule or regulation adopted thereof, to the attorney general or the prosecuting attorney of the county wherein the alleged violation arose. In addition to any other action they might commence, the attorney general or the county prosecutor may bring an action in the name of the state, with or without such reference, against any person to restrain and prevent the doing of any act or practice prohibited by this chapter: *Provided*, That this chapter shall be considered in conjunction with chapters 9.04 and 19.86 RCW, as now or hereafter amended, and the powers and duties of the attorney general and the prosecuting attorney as they may appear in the aforementioned chapters, shall apply against all persons subject to this chapter. [1973 1st ex.s. c 13 § 34.]

**19.09.350 Fees.** To defray the cost of administering this chapter the director shall collect fees for the following services in amounts determined by the director as provided in RCW 43.24.085: Filing a registration of a charitable organization, renewal of such registration, filing each separate financial statement of the solicitation of funds by a charitable organization, filing the registration of a professional fund raiser, filing the registration of a professional solicitor: *Provided*, That no specific fee

provided for under this section shall be collected from any person or organization more than once in any calendar year.

All such fees, when received by the director, shall be transmitted to the state treasurer. [1975 1st ex.s. c 30 § 89; 1973 1st ex.s. c 13 § 35.]

**19.09.360 Compliance required for registration.** The director shall refuse to accept or file the registration of a charitable organization or of any other person who has not complied with the provisions of this chapter. [1973 1st ex.s. c 13 § 36.]

**19.09.370 Radio, television stations, newspapers exempt—Exception.** Nothing in this chapter shall require registration or application for registration by radio and television stations or legal newspapers, or their employees acting within the scope of their employment nor shall any such station, newspaper or employee thereof be considered a professional fund raiser, charitable organization, professional solicitor or trustee: *Provided, however*, The manager or publisher of any such station or newspaper which solicits and actually collects charitable cash contributions exceeding a total value of five hundred dollars for any single charitable purpose during any twelve month period, although exempt from the registration provisions of this chapter, shall file a short form report, in the form and manner provided under RCW 19.09.130, as an account of the distribution of such contributions, and thereafter such additional information as the director may require. [1973 1st ex.s. c 66 § 1.]

**19.09.900 Effective date—1973 1st ex.s. c 13.** Except as provided in this section, this chapter shall not take effect until January 1, 1974. The director may, prior to such date, adopt regulations for the implementation of this chapter, but such regulations shall not take effect until January 1, 1974, or thereafter. [1973 1st ex.s. c 13 § 37.]

**19.09.910 Severability—1973 1st ex.s. c 13.** The provisions of this chapter are severable, and if any part or provision hereof shall be void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this chapter. [1973 1st ex.s. c 13 § 38.]

## Chapter 19.10 CHARITABLE TRUSTS

### Sections

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*The Washington Principal and Income Act: Chapter 11.104 RCW.*

**19.10.010 Purpose.** The purpose of this chapter is to facilitate public supervision over the administration of public charitable trusts and similar relationships and to clarify and implement the powers and duties of the attorney general with relation thereto. [1967 ex.s. c 53 § 1.]

**19.10.020 Definitions.** When used in this chapter, unless the context otherwise requires:

"Person" means an individual, organization, group, association, partnership, corporation, or any combination of them.

"Trustee" means (1) any person holding property in trust for a public charitable purpose; except the United States, its states, territories, and possessions, the District of Columbia, Puerto Rico, and their agencies and subdivisions; and (2) a corporation formed for the administration of a charitable trust or holding assets subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes: *Provided*, That the term "trustee" does not apply to (a) religious corporations duly organized and operated in good faith as religious organizations, which have received a declaration of current tax exempt status from the government of the United States; their duly organized branches or chapters; and charities, agencies, and organizations affiliated with and forming an integral part of said organization, or operated, supervised, or controlled directly by such religious corporations nor any officer of any such religious organization who holds property for religious purposes: *Provided*, That if such

organization has not received from the United States government a declaration of current tax exempt status prior to the time it receives property under the terms of a charitable trust, this exemption shall be applicable for two years only from the time of receiving such property, or until such tax exempt status is finally declared, whichever is sooner; or (b) an educational institution which is nonprofit and charitable, having a program of primary, secondary, or collegiate instruction comparable in scope to that of any public school or college operated by the state of Washington or any of its school districts. [1971 ex.s. c 226 § 1; 1967 ex.s. c 53 § 2.]

**19.10.040 Information, documents and reports are public records—Inspection—Publication.** All information, documents, and reports filed with the attorney general under this chapter are matters of public record and shall be open to public inspection, subject to reasonable regulation: *Provided*, That the attorney general shall withhold from public inspection any trust instrument so filed whose content is not exclusively for charitable purposes. The attorney general may publish, on a periodic or other basis, such information as may be necessary or appropriate in the public interest concerning the registration, reports, and information filed with him or any other matters relevant to the administration and enforcement of this chapter. [1967 ex.s. c 53 § 4.]

**19.10.050 Register of trustees—Establishment and maintenance.** The attorney general shall establish and maintain a register of trustees as defined in RCW 19.10.020 and, to that end, shall conduct whatever investigation is necessary, and shall obtain from public records, court officers, taxing authorities, trustees, and other sources whatever information, copies of instruments, reports, and records are needed, for the establishment and maintenance of the register. [1967 ex.s. c 53 § 5.]

**19.10.060 Instrument establishing trust, inventory of assets, tax exempt status or claim, tax return to be filed.** Every trustee shall file with the attorney general within two months after receiving possession or control of the trust corpus a copy of the instrument establishing his title, powers, or duties, and an inventory of the assets of such charitable trust. In addition, trustees exempted from the provisions of RCW 19.10.070 shall file with the attorney general a copy of the declaration of the tax-exempt status or other basis of the claim for such exemption; a copy of the instrument establishing the trustee's title, powers or duties; an inventory of the assets of such trust; and, annually, a copy of each publicly available United States tax or information return or report of the trust which the trustee files with the internal revenue service. The trustees of charitable trusts existing at the time this chapter or \*this 1971 amendatory act takes effect shall comply with this section within six months thereafter. [1971 ex.s. c 226 § 2; 1967 ex.s. c 53 § 6.]

\*Reviser's note: The effective date of "this 1971 amendatory act" [1971 ex.s. c 226] was August 9, 1971.



**19.10.070 Reports of trustee—Filing—Rules and regulations.** Except as otherwise provided every trustee subject to this chapter shall file with the attorney general annual reports, under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the trustee, in accordance with rules and regulations of the attorney general.

The attorney general shall make rules and regulations as to the time for filing reports, the contents thereof, and the manner of executing and filing them. He may classify trusts and other relationships concerning property held for a charitable purpose as to purpose, nature of assets, duration of the trust or other relationship, amount of assets, amounts to be devoted to charitable purposes, nature of trustee, or otherwise, and may establish different rules for the different classes as to time and nature of the reports required, to the ends (1) that he shall receive reasonably current, periodic reports as to all charitable trusts or other relationships of a similar nature which will enable him to ascertain whether they are being properly administered, and (2) that periodic reports shall not unreasonably add to the expense of the administration of charitable trusts and similar relationships. The attorney general may suspend the filing of reports as to a particular charitable trust or relationship for a reasonable, specifically designated time upon written application of the trustee filed with the attorney general after the attorney general has filed in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and that periodic reports are not required for proper supervision by his office.

A copy of an account filed by the trustee in any court having jurisdiction of the trust or other relationship, if the account substantially complies with the rules and regulations of the attorney general, may be filed as a report required by this section.

The first report for a trust or similar relationship hereafter established, unless the filing thereof is suspended as herein provided, shall be filed not later than one year after any part of the income or principal is authorized or required to be applied to a charitable purpose. If any part of the income or principal of a trust previously established is authorized or required to be applied to a charitable purpose at the time this act takes effect, the first report, unless the filing thereof is suspended, shall be filed within six months after the effective date of this act. [1971 ex.s. c 226 § 3; 1967 ex.s. c 53 § 7.]

**19.10.073 Reports of trustee—Trustees exempt from RCW 19.10.070.** The following trustees shall be exempt from the provisions of RCW 19.10.070:

(1) A bank or trust company subject to examination by the supervisor of banking of the state of Washington, the comptroller of the currency of the United States or the board of governors of the federal reserve system; which such bank or trust company is acting as trustee, executor or court-appointed fiduciary: *Provided*, That a bank or trust company which is a co-fiduciary of a trust shall be deemed to be the sole fiduciary of such trust

under this section, if the bank or trust company is custodian of the books and records of the trust and has the responsibility for preparing the reports and returns which are filed with the internal revenue service;

(2) The governing body of a nonprofit community foundation or other nonprofit foundation incorporated for charitable purposes, contributions to which are currently allowed as charitable deductions under the United States income tax laws;

(3) The governing body of a hospital which is nonprofit and charitable, other than a hospital initially formed as a trustee pursuant to or in connection with the terms of a charitable trust. [1971 ex.s. c 226 § 4.]

**19.10.075 Trusts not exclusively for charitable purposes—Instrument and information not public—Filings and reporting, when required.** A trust is not exclusively for charitable purposes, within the meaning of RCW 19.10.040, when the instrument creating it contains a trust for several or mixed purposes, and any one or more of such purposes is not charitable within the meaning of RCW 19.10.020, as enacted or hereafter amended. Such instrument shall be withheld from public inspection by the attorney general and no information as to such noncharitable purpose shall be made public.

Annual reporting of such trusts to the attorney general, as required by RCW 19.10.060 or 19.10.070 now or as hereafter amended, shall commence within one year after trust income or principal is authorized or required to be used for a charitable purpose.

When a trust consists of a vested charitable remainder preceded by a life estate, a copy of the instrument shall be filed by the trustee or by the life tenant, within two months after commencement of the life estate.

If the trust instrument contains only contingent gifts or remainders to charitable purposes, no charitable trust shall be deemed created until a charitable gift or remainder is legally vested. The first registration or report of such trust shall be filed within two months after trust income or principal is authorized or required to be used for a charitable purpose. [1971 ex.s. c 226 § 5.]

**19.10.080 Custodian of court records to furnish copies to attorney general—List of tax exemption applications to be filed.** The custodian of the records of a court having jurisdiction of probate matters or of charitable trusts shall furnish within two months after receiving possession or control thereof such copies of papers, records, and files of his office relating to the subject of this chapter as the attorney general shall require.

Every officer, agency, board or commission of this state receiving applications for exemption from taxation of any charitable trust or similar relationship in which the trustee is subject to this chapter shall annually file with the attorney general a list of all applications received during the year. [1967 ex.s. c 53 § 8.]

**19.10.090 Uniformity of chapter with laws of other states.** It is the purpose of this chapter to make uniform the laws of this and other states on the subject of charitable trusts and similar relationships. Recognizing the

necessity for uniform application and enforcement of this chapter, its provisions are hereby declared mandatory and they shall not be superseded by the provisions of any trust instrument or similar instrument to the contrary. [1967 ex.s. c 53 § 9.]

**19.10.100 Investigations by attorney general authorized—Appearance and production of books, papers, documents, etc., may be required.** The attorney general may investigate transactions and relationships of trustees and other persons subject to this chapter for the purpose of determining whether the trust or other relationship is administered according to law and the terms and purposes of the trust, or to determine compliance with this chapter in any other respect. He may require any officer, agent, trustee, fiduciary, beneficiary, or other person, to appear, at a time and place designated by the attorney general in the county where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts, or disbursements in the possession or control of the person ordered to appear. [1967 ex.s. c 53 § 10.]

**19.10.110 Order to appear—Effect—Enforcement—Court review.** When the attorney general requires the attendance of any person, as provided in RCW 19.10.100, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena, and, upon application of the attorney general, obedience to the order may be enforced by any superior court judge in the county where the person receiving it resides or is found, in the same manner as though the notice were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in the record, and shall be subject to review by the supreme court or the court of appeals by certiorari or other appropriate proceeding. [1971 c 81 § 64; 1967 ex.s. c 53 § 11.]

*Rules of court: Writ procedure superseded by RAP 2.1(b), 2.2, 18.22.*

**19.10.120 Proceedings to secure compliance and proper trust administration—Attorney general to be notified of judicial proceedings involving charitable trust—Powers and duties additional.** The attorney general may institute appropriate proceedings to secure compliance with this chapter and to secure the proper administration of any trust or other relationship to which this chapter applies. He shall be notified of all judicial proceedings involving or affecting the charitable trust or its administration in which, at common law, he is a necessary or proper party as representative of the public beneficiaries. The notification shall be given by registered mail to the attorney general at his office in

Olympia at least twenty days prior to hearing thereon, except where shorter periods are prescribed by statute or by rules of court. The powers and duties of the attorney general provided in this chapter are in addition to his existing powers and duties, and are not to be construed to limit or to restrict the exercise of the powers or the performance of the duties of the attorney general or of any prosecuting attorney which they may exercise or perform under any other provision of law. Except as provided herein, nothing in this chapter shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it. [1967 ex.s. c 53 § 12.]

**19.10.125 Violations—Refusal to file reports, perform duties, etc.** The wilful refusal by a trustee to make or file any report or to perform any other duties expressly required by this chapter, or to comply with any valid rule or regulation promulgated by the attorney general under this chapter, shall constitute a breach of trust and a violation of this chapter. [1971 ex.s. c 226 § 6.]

**19.10.130 Violations—Civil action may be prosecuted.** A civil action for a violation of this chapter may be prosecuted by the attorney general or by a prosecuting attorney designated by the attorney general. [1967 ex.s. c 53 § 13.]

**19.10.140 Penalty.** Every false statement of material fact knowingly made or caused to be made by any person in any statement or report filed under this chapter and every other violation of this chapter is a gross misdemeanor. [1967 ex.s. c 53 § 14.]

**19.10.200 Tax Reform Act of 1969, state implementation—Application to trusts.** RCW 19.10.200 through 19.10.260 shall apply only to trusts which are "private foundations" as defined in section 509 of the Internal Revenue Code of 1954, "charitable trusts" as described in section 4947(a)(1) of the Internal Revenue Code of 1954, or "split-interest trusts" as described in section 4947(a)(2) of the Internal Revenue Code of 1954. With respect to any such trust created after December 31, 1969, RCW 19.10.200 through 19.10.260 shall apply from such trust's creation. With respect to any such trust created before January 1, 1970, RCW 19.10.200 through 19.10.260 shall apply only to such trust's federal taxable years beginning after December 31, 1971. [1971 c 58 § 1.]

**19.10.210 Tax Reform Act of 1969, state implementation—Trust instruments deemed to contain prohibiting provisions.** The trust instrument of each trust to which RCW 19.10.200 through 19.10.260 applies shall be deemed to contain provisions prohibiting the trustee from:

(1) Engaging in any act of "self-dealing" (as defined in section 4941(d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1954;

(2) Retaining any "excess business holdings" (as defined in section 4943(c) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1954;

(3) Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1954; and

(4) Making any "taxable expenditures" (as defined in section 4945(d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1954:

*Provided*, That this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of section 4947 of the Internal Revenue Code of 1954. [1971 c 58 § 2.]

**19.10.220 Tax Reform Act of 1969, state implementation—Trust instruments deemed to contain certain provisions for distribution.** The trust instrument of each trust to which RCW 19.10.200 through 19.10.260 applies, except "split-interest" trusts, shall be deemed to contain a provision requiring the trustee to distribute, for the purposes specified in the trust instrument, for each taxable year of the trust, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1954. [1971 c 58 § 3.]

**19.10.230 Tax Reform Act of 1969, state implementation—Rights, powers, of courts, attorney general, not impaired.** Nothing in RCW 19.10.200 through 19.10.260 shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust. [1971 c 58 § 4.]

**19.10.240 Tax Reform Act of 1969, state implementation—Construction of references to federal code.** All references to sections of the Internal Revenue Code of 1954 shall include future amendments to such sections and corresponding provisions of future internal revenue laws. [1971 c 58 § 5.]

**19.10.250 Tax Reform Act of 1969, state implementation—Application to new trust or amendment to existing trust.** Nothing in RCW 19.10.200 through 19.10.260 shall limit the power of a person who creates a trust after June 10, 1971 or the power of a person who has retained or has been granted the right to amend a trust created before June 10, 1971, to include a specific provision in the trust instrument or an amendment thereto, as the case may be, which provides that some or all of the provisions of RCW 19.10.210 and 19.10.220 shall have no application to such trust. [1971 c 58 § 6.]

**19.10.260 Tax Reform Act of 1969, state implementation—Severability—RCW 19.10.210 through 19.10.260.** If any provision of RCW 19.10.200 through

19.10.260 or the application thereof to any trust is held invalid, such invalidity shall not affect the other provisions or applications of RCW 19.10.200 through 19.10.260 which can be given effect without the invalid provision or application, and to this end the provisions of RCW 19.10.200 through 19.10.260 are declared to be severable. [1971 c 58 § 7.]

**19.10.270 Tax Reform Act of 1969, state implementation—Not for profit corporations.** See RCW 24.40.010 through 24.40.070.

**19.10.900 Severability—1967 ex.s. c 53.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 53 § 15.]

## Chapter 19.12 CHRISTMAS TREE EXPORTING

### Sections

19.12.070 Reports by shippers.  
19.12.090 Violations—Penalty.

*Cutting or destroying trees: RCW 76.04.397.*

*Harvesting and export of Christmas trees, jurisdiction over transferred to department of natural resources: RCW 43.30.100.*

*Specialized forest products: Chapter 76.48 RCW.*

*State forest lands, sale of Christmas trees: RCW 76.12.120.*

**19.12.070 Reports by shippers.** Within thirty days after the first day of January of each year every person, firm or corporation shipping Christmas trees shall file with the state supervisor of forestry a written report subscribed and sworn to before any officer authorized to take acknowledgment of deeds, showing the number of Christmas trees shipped or transported and sold outside of the state during the preceding calendar year, the name of the person, firm or corporation from whom the said trees were acquired, the legal description of the property from which such trees were cut, and the states to which they were shipped. [1955 c 225 § 2; 1937 c 112 § 6; RRS § 8291-6.]

**19.12.090 Violations—Penalty.** The violation of any of the provisions of this chapter shall constitute a gross misdemeanor. [1937 c 112 § 7; RRS § 8291-7.]

## Chapter 19.16 COLLECTION AGENCIES

### Sections

19.16.100 Definitions.  
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**19.16.100 Definitions.** Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Person" includes individual, firm, partnership, trust, joint venture, association, or corporation.

(2) "Collection agency" means and includes:

(a) Any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person;

(b) Any person who directly or indirectly furnishes or attempts to furnish, sells, or offers to sell forms represented to be a collection system or scheme intended or calculated to be used to collect claims even though the forms direct the debtor to make payment to the creditor and even though the forms may be or are actually used by the creditor himself in his own name;

(c) Any person who in attempting to collect or in collecting his own claim uses a fictitious name or any name other than his own which would indicate to the debtor that a third person is collecting or attempting to collect such claim.

(3) "Collection agency" does not mean and does not include:

(a) Any individual engaged in soliciting claims for collection, or collecting or attempting to collect claims on behalf of a licensee under this chapter, if said individual is an employee of the licensee;

(b) Any individual collecting or attempting to collect claims for not more than one employer, if all the collection efforts are carried on in the name of the employer and if the individual is an employee of the employer; or

(c) Any person whose collection activities are carried on in his or its true name and are confined and are directly related to the operation of a business other than that of a collection agency, such as but not limited to trust companies, savings and loan associations, building and loan associations, abstract companies doing an escrow business, real estate brokers, public officers acting in their official capacities, persons acting under court order, lawyers, insurance companies, credit unions, loan or finance companies, mortgage banks, and banks.

(4) "Claim" means any obligation for the payment of money or thing of value arising out of any agreement or contract, express or implied.

(5) "Director" means the director of the department of motor vehicles.

(6) "Client" or "customer" means any person authorizing or employing a collection agency to collect a claim.

(7) "Licensee" means any person licensed under this chapter.

(8) "Board" means the Washington state collection agency board.

(9) "Debtor" means any person owing or alleged to owe a claim. [1971 ex.s. c 253 § 1.]

**19.16.110 License required.** No person shall act, assume to act, or advertise as a collection agency as defined in this chapter, except as authorized by this chapter, without first having applied for and obtained a license from the director.

Nothing contained in this section shall be construed to require a regular employee of a collection agency duly licensed under this chapter to procure a collection agency license. [1971 ex.s. c 253 § 2.]

**19.16.120 Denial, suspension, revocation or refusal to renew licenses—Grounds.** In addition to other provisions of this chapter, any license issued pursuant to this chapter or any application therefor may be denied, not renewed, suspended, or revoked:

(1) If an individual applicant or licensee is less than eighteen years of age or is not a resident of this state.

(2) If an applicant or licensee is not authorized to do business in this state.

(3) If the application or renewal forms required by this chapter are incomplete, fees required under RCW 19.16.140 and 19.16.150 have not been paid, and the surety bond or cash deposit or other negotiable security acceptable to the director required by RCW 19.16.190 has not been filed or renewed or is canceled.

(4) If any individual applicant, owner, officer, director, or managing employee of a nonindividual applicant or licensee:

(a) Shall have knowingly made a false statement of a material fact in any application for a collection agency license or renewal thereof, or in any data attached thereto and two years have not elapsed since the date of such statement;

(b) Shall have had a license to engage in the business of a collection agency denied, not renewed, suspended, or revoked by this state, any other state, or foreign country, for any reason other than the nonpayment of licensing fees or failure to meet bonding requirements: *Provided*, That the terms of this subsection shall not apply if:

(i) Two years have elapsed since the time of any such denial, nonrenewal, or revocation; or

(ii) The terms of any such suspension have been fulfilled;

(c) Has been convicted in any court of any felony involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud and is incarcerated for that offense or five years have not elapsed since the date of such conviction;

(d) Has had any judgment entered against him in any civil action involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud and five years have not elapsed since the date of the entry of the final judgment in said action: *Provided*, That in no event shall a license be issued unless the judgment debt has been discharged;

(e) Has had his license to practice law suspended or revoked and two years have not elapsed since the date of such suspension or revocation, unless he has been relicensed to practice law in this state;

(f) Has had any judgment entered against him or it under the provisions of RCW 19.86.080 or 19.86.090 involving a violation or violations of RCW 19.86.020 and two years have not elapsed since the entry of the final judgment: *Provided*, That in no event shall a license be issued unless the terms of such judgment, if any, have been fully complied with: *Provided further*, That said judgment shall not be grounds for denial, suspension, nonrenewal, or revocation of a license unless the judgment arises out of and is based on acts of the applicant, owner, officer, director, managing employee, or licensee while acting for or as a collection agency;

(g) Has petitioned for bankruptcy, and two years have not elapsed since the filing of said petition;

(h) Shall be insolvent in the sense that his or its liabilities exceed his or its assets or in the sense that he or it cannot meet his or its obligations as they mature;

(i) Has knowingly failed to comply with, or violated any provisions of this chapter or any rule or regulation issued pursuant to this chapter, and two years have not elapsed since the occurrence of said noncompliance or violation.

Any person who is engaged in the collection agency business as of January 1, 1972 shall, upon filing the application, paying the fees, and filing the surety bond or cash deposit or other negotiable security in lieu of bond required by this chapter, be issued a license hereunder. [1973 1st ex.s. c 20 § 1; 1971 ex.s. c 253 § 3.]

**19.16.130 License—Application—Form—Contents.** Every application for a license shall be in

writing, under oath, and in the form prescribed by the director.

Every application shall contain such relevant information as the director may require.

The applicant shall furnish the director with such evidence as the director may reasonably require to establish that the requirements and qualifications for a licensee have been fulfilled by the applicant.

Every application for a license shall state, among other things that may be required, the name of the applicant with the name under which the applicant will do business and the location by street and number, city and state of each office of the business for which the license is sought.

No license shall be issued in any fictitious name which may be confused with or which is similar to any federal, state, county, or municipal governmental function or agency or in any name which may tend to describe any business function or enterprise not actually engaged in by the applicant or in any name which is the same as or so similar to that of any existing licensee as would tend to deceive the public or in any name which would otherwise tend to be deceptive or misleading. The foregoing shall not necessarily preclude the use of a name which may be followed by a geographically descriptive title which would distinguish it from a similar name licensed but operating in a different geographical area. [1971 ex.s. c 253 § 4.]

**19.16.140 License—Application—Fees.** Each applicant when submitting his application shall pay a licensing fee and an investigation fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. If a license is not issued in response to the application, the license fee shall be returned to the applicant.

An annual license fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended shall be paid to the director on or before January first of each year. If the annual license fee is not paid on or before January first, the licensee shall be assessed a penalty for late payment in an amount determined by the director as provided in RCW 43.24.085 as now or hereafter amended. If the fee and penalty are not paid by January thirty-first, it will be necessary for the licensee to submit a new application for a license: *Provided*, That no license shall be issued upon such new application unless and until all fees and penalties previously accrued under this section have been paid.

Any license or branch office certificate issued under the provisions of this chapter shall expire on December thirty-first following the issuance thereof. [1975 1st ex.s. c 30 § 90; 1971 ex.s. c 253 § 5.]

**19.16.150 Branch office certificate required.** If a licensee maintains a branch office, he or it shall not operate a collection agency business in such branch office until he or it has secured a branch office certificate therefor from the director. A licensee, so long as his or its license is in full force and effect and in good standing, shall be entitled to branch office certificates for any

branch office operated by such licensee upon payment of the fee therefor provided in this chapter.

Each licensee when applying for a branch office certificate shall pay a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended. An annual fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended for a branch office certificate shall be paid to the director on or before January first of each year. If the annual fee is not paid on or before January first, a penalty for late payment in an amount determined by the director as provided in RCW 43.24.085 as now or hereafter amended shall be assessed. If the fee and the penalty are not paid by January thirty-first, it will be necessary for the licensee to apply for a new branch office certificate: *Provided*, That no such new branch office certificate shall be issued unless and until all fees and penalties previously accrued under this section have been paid. [1975 1st ex.s. c 30 § 91; 1971 ex.s. c 253 § 6.]

**19.16.160 License and branch office certificate—Form—Contents—Display.** Each license and branch office certificate, when issued, shall be in the form and size prescribed by the director and shall state in addition to any other matter required by the director:

- (1) The name of the licensee;
- (2) The name under which the licensee will do business;
- (3) The address at which the collection agency business is to be conducted; and
- (4) The number and expiration date of the license or branch office certificate.

A licensee shall display his or its license in a conspicuous place in his or its principal place of business and, if he or it conducts a branch office, the branch office certificate shall be conspicuously displayed in the branch office.

Concurrently with or prior to engaging in any activity as a collection agency, as defined in this chapter, any person shall furnish to his or its client or customer the number indicated on the collection agency license issued to him pursuant to this section. [1973 1st ex.s. c 20 § 2; 1971 ex.s. c 253 § 7.]

**19.16.170 Procedure upon change of name or business location.** Whenever a licensee shall contemplate a change of his or its trade name or a change in the location of his or its principal place of business or branch office, he or it shall give written notice of such proposed change to the director. The director shall approve the proposed change and issue a new license or a branch office certificate, as the case may be, reflecting the change. [1971 ex.s. c 253 § 8.]

**19.16.180 Assignability of license or branch office certificate.** (1) Except as provided in subsection (2) of this section, a license or branch office certificate granted under this chapter is not assignable or transferable.

(2) Upon the death of an individual licensee, the director shall have the right to transfer the license and

any branch office certificate of the decedent to the personal representative of his estate for the period of the unexpired term of the license and such additional time, not to exceed one year from the date of death of the licensee, as said personal representative may need in order to settle the deceased's estate or sell the collection agency. [1971 ex.s. c 253 § 9.]

**19.16.190 Surety bond requirements—Cash deposit or securities.** (1) Each applicant shall, at the time of applying for a license, file with the director a surety bond in the sum of five thousand dollars. The bond shall be annually renewable on January first of each year, shall be approved by the director as to form and content, and shall be executed by the applicant as principal and by a surety company authorized to do business in this state as surety. Such bond shall run to the state of Washington as obligee for the benefit of the state and conditioned that the licensee shall faithfully and truly perform all agreements entered into with the licensee's clients or customers and shall, within thirty days after the close of each calendar month, account to and pay to his client or customer the net proceeds of all collections made during the preceding calendar month and due to each client or customer less any offsets due licensee under RCW 19.16.210 and 19.16.220. The bond required by this section shall remain in effect until canceled by action of the surety or the licensee or the director.

(2) An applicant for a license under this chapter may furnish, file, and deposit with the director, in lieu of the surety bond provided for herein, a cash deposit or other negotiable security acceptable to the director. The security deposited with the director in lieu of the surety bond shall be returned to the licensee at the expiration of one year after the collection agency's license has expired or been revoked if no legal action has been instituted against the licensee or on said security deposit at the expiration of said one year.

(3) A surety may file with the director notice of his or its withdrawal on the bond of the licensee. Upon filing a new bond or upon the revocation of the collection agency license or upon the expiration of sixty days after the filing of notice of withdrawal as surety by the surety, the liability of the former surety for all future acts of the licensee shall terminate.

(4) The director shall immediately cancel the bond given by a surety company upon being advised that the surety company's license to transact business in this state has been revoked.

(5) Upon the filing with the director of notice by a surety of his withdrawal as the surety on the bond of a licensee or upon the cancellation by the director of the bond of a surety as provided in this section, the director shall immediately give notice to the licensee of the withdrawal or cancellation. The notice shall be sent to the licensee by registered or certified mail with request for a return receipt and addressed to the licensee at his or its main office as shown by the records of the director. At the expiration of thirty days from the date of mailing the notice, the license of the licensee shall be terminated,



unless the licensee has filed a new bond with a surety satisfactory to the director.

(6) All bonds given under this chapter shall be filed and held in the office of the director. [1971 ex.s. c 253 § 10.]

**19.16.200 Action on bond, cash deposit or securities.** In addition to all other legal remedies, an action may be brought in any court of competent jurisdiction upon the bond or cash deposit or security in lieu thereof, required by RCW 19.16.190, by any person to whom the licensee fails to account and pay as set forth in such bond or by any client or customer of the licensee who has been damaged by failure of the licensee to comply with all agreements entered into with such client or customer: *Provided*, That the aggregate liability of the surety to all such clients or customers shall in no event exceed the sum of such bond.

An action upon such bond or security shall be commenced by serving and filing of the complaint within one year from the date of the cancellation of the bond or, in the case of a cash deposit or other security deposited in lieu of the surety bond, within one year of the date of expiration or revocation of license: *Provided*, That no action shall be maintained upon such bond or such cash deposit or other security for any claim which has been barred by any nonclaim statute or statute of limitations of this state. Two copies of the complaint shall be served by registered or certified mail upon the director at the time the suit is started. Such service shall constitute service on the surety. The director shall transmit one of said copies of the complaint served on him to the surety within forty-eight hours after it shall have been received.

The director shall maintain a record, available for public inspection, of all suits commenced under this chapter upon surety bonds, or the cash or other security deposited in lieu thereof.

In the event of a judgment being entered against the deposit or security referred to in RCW 19.16.190(2), the director shall, upon receipt of a certified copy of a final judgment, pay said judgment from the amount of the deposit or security. [1971 ex.s. c 253 § 11.]

**19.16.210 Accounting and payments by licensee to customer.** A licensee shall within thirty days after the close of each calendar month account in writing to his or its customers for all collections made during that calendar month and pay to his or its customers the net proceeds due and payable of all collections made during that calendar month except that a licensee need not account to the customer for:

(1) Court costs recovered which were previously advanced by licensee or his or its attorney.

(2) Attorney's fees and interest or other charges incidental to the principal amount of the obligation legally and properly belonging to the licensee, if such charges are retained by the licensee after the principal amount of the obligation has been accounted for and remitted to the customer. When the net proceeds are less than ten dollars at the end of any calendar month, payments may

be deferred for a period not to exceed three months. [1971 ex.s. c 253 § 12.]

**19.16.220 Accounting and payments by customer to licensee.** Every customer of a licensee shall, within thirty days after the close of each calendar month, account and pay to his or its collection agency all sums owing to the collection agency for payments received by the customer during that calendar month on claims in the hands of the collection agency.

If a customer fails to pay a licensee any sums due under this section, the licensee shall, in addition to other remedies provided by law, have the right to offset any moneys due the licensee under this section against any moneys due customer under RCW 19.16.210. [1971 ex.s. c 253 § 13.]

**19.16.230 Licensee—Business office—Records to be kept.** (1) Every licensee required to keep and maintain records pursuant to this section shall establish and maintain a regular active business office in the state of Washington for the purpose of conducting his or its collection agency business. Said office must be open to the public during reasonable stated business hours, and must be managed by a resident of the state of Washington.

(2) Every licensee shall keep a record of all sums collected by him or it and all disbursements made by him or it. All such records shall be kept at the business office referred to in subsection (1) of this section.

(3) Licensees shall maintain and preserve accounting records of collections and payments to customers for a period of six years from the date of the last entry thereon. [1973 1st ex.s. c 20 § 3; 1971 ex.s. c 253 § 14.]

**19.16.240 Licensee—Trust fund account.** Each licensee shall at all times maintain a separate bank account in this state in which all moneys collected by the licensee shall be deposited except that negotiable instruments received may be forwarded directly to a customer. Moneys received must be deposited within ten days after posting to the book of accounts. In no event shall moneys received be disposed of in any manner other than to deposit such moneys in said account or as provided in this section.

The bank account shall bear some title sufficient to distinguish it from the licensee's personal or general checking account, such as "Customer's Trust Fund Account". There shall be sufficient funds in said trust account at all times to pay all moneys due or owing to all customers and no disbursements shall be made from such account except to customers or to remit moneys collected from debtors on assigned claims and due licensee's attorney or to refund over payments except that a licensee may periodically withdraw therefrom such moneys as may accrue to licensee.

Any money in such trust account belonging to a licensee may be withdrawn for the purpose of transferring the same into the possession of licensee or into a personal or general account of licensee. [1971 ex.s. c 253 § 15.]



**19.16.245 Financial statement.** No licensee shall receive any money from any debtor as a result of the collection of any claim until he or it shall have submitted a financial statement showing the assets and liabilities of the licensee truly reflecting that the licensee's net worth is not less than the sum of seven thousand five hundred dollars, in cash or its equivalent, of which not less than five thousand dollars shall be deposited in a bank, available for the use of the licensee's business. Any money so collected shall be subject to the provisions of RCW 19.16.430(2). The financial statement shall be sworn to by the licensee, if the licensee is an individual, or by a partner, officer, or manager in its behalf if the licensee is a partnership, corporation, or unincorporated association. The information contained in the financial statement shall be confidential and not a public record, but is admissible in evidence at any hearing held, or in any action instituted in a court of competent jurisdiction, pursuant to the provisions of this chapter: *Provided*, That this section shall not apply to those persons holding a valid license issued pursuant to this chapter on July 16, 1973. [1973 1st ex.s. c 20 § 9.]

**19.16.250 Prohibited practices.** No licensee or employee of a licensee shall:

(1) Directly or indirectly aid or abet any unlicensed person to engage in business as a collection agency in this state or receive compensation from such unlicensed person: *Provided*, That nothing in this chapter shall prevent a licensee from accepting, as forwarder, claims for collection from a collection agency or attorney whose place of business is outside the state.

(2) Collect or attempt to collect a claim by the use of any means contrary to the postal laws and regulations of the United States postal department.

(3) Publish or post or cause to be published or posted, any list of debtors commonly known as "deadbeat lists" or threaten to do so.

(4) Have in his possession or make use of any badge, use a uniform of any law enforcement agency or any simulation thereof, or make any statements which might be construed as indicating an official connection with any federal, state, county, or city law enforcement agency, or any other governmental agency, while engaged in collection agency business.

(5) Perform any act or acts, either directly or indirectly, constituting the practice of law.

(6) Advertise for sale or threaten to advertise for sale any claim as a means of endeavoring to enforce payment thereof or agreeing to do so for the purpose of soliciting claims, except where the licensee has acquired claims as an assignee for the benefit of creditors or where the licensee is acting under court order.

(7) Use any name while engaged in the making of a demand for any claim other than the name set forth on his or its current license issued hereunder.

(8) Give or send to any debtor or cause to be given or sent to any debtor, any notice, letter, message, or form which represents or implies that a claim exists unless it shall indicate in clear and legible type:

(a) The name of the licensee and the city, street, and number at which he is licensed to do business;

(b) The name of the original creditor to whom the debtor owed the claim if such name is known to the licensee or employee: *Provided*, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain the name of such person and provide this name to the debtor;

(c) If the notice, letter, message, or form is the first notice to the debtor or if the licensee is attempting to collect a different amount than indicated in his or its first notice to the debtor, an itemization of the claim asserted must be made including:

(i) Amount owing on the original obligation at the time it was received by the licensee for collection or by assignment;

(ii) Interest or service charge, collection costs, or late payment charges, if any, added to the original obligation by the original creditor, customer or assignor before it was received by the licensee for collection, if such information is known by the licensee or employee: *Provided*, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain information on such items and provide this information to the debtor;

(iii) Interest or service charge, if any, added by the licensee or customer or assignor after the obligation was received by the licensee for collection;

(iv) Collection costs, if any, that the licensee is attempting to collect;

(v) Attorneys' fees, if any, that the licensee is attempting to collect on his or its behalf or on the behalf of a customer or assignor;

(vi) Any other charge or fee that the licensee is attempting to collect on his or its own behalf or on the behalf of a customer or assignor.

(9) Communicate or threaten to communicate, the existence of a claim to a person other than one who might be reasonably expected to be liable on the claim in any manner other than through proper legal action, process, or proceedings except under the following conditions:

(a) A licensee or employee of a licensee may inform a credit reporting bureau of the existence of a claim: *Provided*, That if the licensee or employee of a licensee reports a claim to a credit reporting bureau, the licensee shall upon receipt of written notice from the debtor that any part of the claim is disputed, forward a copy of such written notice to the credit reporting bureau;

(b) A licensee or employee in collecting or attempting to collect a claim may communicate the existence of a claim to a debtor's employer if the claim has been reduced to a judgment;

(c) A licensee or employee in collecting or attempting to collect a claim that has not been reduced to judgment, may communicate the existence of a claim to a debtor's employer if:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his last known address or place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing to the licensee disputed any part of the claim: *Provided*, That the licensee

or employee may only communicate the existence of a claim which has not been reduced to judgment to the debtor's employer once unless the debtor's employer has agreed to additional communications.

(d) A licensee may for the purpose of locating the debtor or locating assets of the debtor communicate the existence of a claim to any person who might reasonably be expected to have knowledge of the whereabouts of a debtor or the location of assets of the debtor if the claim is reduced to judgment, or if not reduced to judgment; and

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

(10) Threaten the debtor with impairment of his credit rating if a claim is not paid.

(11) Communicate with the debtor after notification in writing from an attorney representing such debtor that all further communications relative to a claim should be addressed to the attorney: *Provided*, That if a licensee requests in writing information from an attorney regarding such claim and the attorney does not respond within a reasonable time, the licensee may communicate directly with the debtor until he or it again receives notification in writing that an attorney is representing the debtor.

(12) Communicate with a debtor or anyone else in such a manner as to harass, intimidate, threaten, or embarrass a debtor, including but not limited to communication at an unreasonable hour, with unreasonable frequency, by threats of force or violence, by threats of criminal prosecution, and by use of offensive language. A communication shall be presumed to have been made for the purposes of harassment if:

(a) It is made with a debtor or spouse in any form, manner, or place, more than three times in a single week;

(b) It is made with a debtor at his or her place of employment more than one time in a single week;

(c) It is made with the debtor or spouse at his or her place of residence between the hours of 9:00 p.m. and 7:30 a.m.

(13) Communicate with the debtor through use of forms or instruments that simulate the form or appearance of judicial process, the form or appearance of government documents, or the simulation of a form or appearance of a telegraphic or emergency message.

(14) Communicate with the debtor and represent or imply that the existing obligation of the debtor may be or has been increased by the addition of attorney fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation of such debtor.

(15) Threaten to take any action against the debtor which the licensee cannot legally take at the time the threat is made.

(16) Send any telegram or make any telephone calls to a debtor or concerning a debt or for the purpose of demanding payment of a claim or seeking information about a debtor, for which the charges are payable by the addressee or by the person to whom the call is made.

(17) In any manner convey the impression that the licensee is vouched for, bonded to or by, or is an instrumentality of the state of Washington or any agency or department thereof.

(18) Collect or attempt to collect in addition to the principal amount of a claim any sum other than allowable interest, collection costs expressly authorized by statute, and, in the case of suit, attorney's fees and taxable court costs.

(19) Procure from a debtor or collect or attempt to collect on any written note, contract, stipulation, promise or acknowledgment under which a debtor may be required to pay any sum other than principal, allowable interest, and, in the case of suit, attorney's fees and taxable court costs. [1971 ex.s. c 253 § 16.]

**19.16.260 Licensing prerequisite to suit.** No collection agency may bring or maintain an action in any court of this state involving the collection of a claim of any third party without alleging and proving that he or it is duly licensed under this chapter and has satisfied the bonding requirements hereof: *Provided*, That in any case where judgment is to be entered by default, it shall not be necessary for the collection agency to prove such matters.

A copy of the current collection agency license, certified by the director to be a true and correct copy of the original, shall be prima facie evidence of the licensing and bonding of such collection agency as required by this chapter. [1971 ex.s. c 253 § 17.]

**19.16.270 Presumption of validity of assignment.** In any action brought by licensee to collect the claim of his or its customer, the assignment of the claim to licensee by his or its customer shall be conclusively presumed valid, if the assignment is filed in court with the complaint, unless objection is made thereto by the debtor in a written answer or in writing five days or more prior to trial. [1971 ex.s. c 253 § 18.]

**19.16.280 Board created—Composition of board—Qualification of members.** There is hereby created a board to be known and designated as the "Washington state collection agency board". The board shall consist of five members, one of whom shall be the director and the other four shall be appointed by the governor. The director may delegate his duties as a board member to a designee from his department. The director or his designee shall be the executive officer of the board and its chairman.

At least two but no more than two members of the board shall be licensees hereunder. Each of the licensee members of the board shall be actively engaged in the collection agency business at the time of his appointment and must continue to be so engaged and continue to be licensed under this chapter during the term of his appointment or he will be deemed to have resigned his

position: *Provided*, That no individual may be a licensee member of the board unless he has been actively engaged as either an owner or executive employee or a combination of both of a collection agency business in this state for a period of not less than five years immediately prior to his appointment.

No board member shall be employed by or have any interest in, directly or indirectly, as owner, partner, officer, director, agent, stockholder, or attorney, any collection agency in which any other board member is employed by or has such an interest.

No member of the board other than the director or his designee shall hold any other elective or appointive state or federal office. [1971 ex.s. c 253 § 19.]

**19.16.290 Board—Initial members—Terms—Oath—Removal.** The initial members of the board shall be named by the governor within thirty days after January 1, 1972. At the first meeting of the board, the members appointed by the governor shall determine by lot the period of time from January 1, 1972 that each of them shall serve, one for one year; one for two years; one for three years; and one for four years. In the event of a vacancy on the board, the governor shall appoint a successor for the unexpired term.

Each member appointed by the governor shall qualify by taking the usual oath of a state officer, which shall be filed with the secretary of state, and each member shall hold office for the term of his appointment and until his successor is appointed and qualified.

Any member of the board other than the director or his designee may be removed by the governor for neglect of duty, misconduct, malfeasance or misfeasance in office, after being given a written statement of the charges against him and sufficient opportunity to be heard thereon. [1971 ex.s. c 253 § 20.]

**19.16.300 Board meetings—Quorum—Effect of vacancy.** The board shall meet as soon as practicable after the governor has appointed the initial members of the board. The board shall meet at least once a year and at such other times as may be necessary for the transaction of its business.

The time and place of the initial meeting of the board and the annual meetings shall be at a time and place fixed by the director. Other meetings of the board shall be held upon written request of the director at a time and place designated by him, or upon the written request of any two members of the board at a time and place designated by them.

A majority of the board shall constitute a quorum.

A vacancy in the board membership shall not impair the right of the remaining members of the board to exercise any power or to perform any duty of the board, so long as the power is exercised or the duty performed by a quorum of the board. [1971 ex.s. c 253 § 21.]

**19.16.310 Board—Compensation—Reimbursement of travel expenses.** Each member of the board appointed by the governor shall receive as compensation twenty-five dollars for each day, or portion thereof, in which he is actually engaged in the official business and

duties of the board and in addition thereto shall be reimbursed for travel expenses incurred while on official business of the board and in attending meetings thereof, in accordance with the provisions of RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 58; 1971 ex.s. c 253 § 22.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**19.16.320 Board—Territorial scope of operations.** The board may meet, function and exercise its powers and perform its duties at any place within the state. [1971 ex.s. c 253 § 23.]

**19.16.330 Board—Immunity from suit.** Members of the board shall be immune from suit in any civil action based upon an official act performed in good faith as members of such board. [1971 ex.s. c 253 § 24.]

**19.16.340 Board—Records.** All records of the board shall be kept in the office of the director. Copies of all records and papers of the board, certified to be true copies by the director, shall be received in evidence in all cases with like effect as the originals. All actions by the board which require publication, or any writing shall be over the signature of the director or his designee. [1971 ex.s. c 253 § 25.]

**19.16.351 Additional powers and duties of board.** The board, in addition to any other powers and duties granted under this chapter:

(1) May adopt, amend, and rescind such rules and regulations for its own organization and procedure and such other rules and regulations as it may deem necessary in order to perform its duties hereunder.

(2) When an applicant or licensee has requested a hearing as provided in RCW 19.16.360 the board shall meet and after notice and hearing may deny any application for a license hereunder, and may fail to renew, suspend, or revoke any license issued hereunder, if the applicant or licensee has failed to comply with or violated any provision of this chapter or any rule or regulation issued pursuant to this chapter. It shall be the duty of the board within thirty days after the last day of hearing to notify the appellant of its decision.

(3) May inquire into the needs of the collection agency business, the needs of the director, and the matter of the policy of the director in administering this chapter, and make such recommendations with respect thereto as, after consideration, may be deemed important and necessary for the welfare of the state, the welfare of the public, and the welfare and progress of the collection agency business.

(4) Upon request of the director, confer and advise in matters relating to the administering of this chapter.

(5) May consider and make appropriate recommendations to the director in all matters referred to the board.

(6) Upon his request, confer with and advise the director in the preparation of any rules and regulations to be adopted, amended, or repealed.

(7) May assist the director in the collection of such information and data as the director may deem necessary to the proper administration of this chapter. [1973 1st ex.s. c 20 § 8.]

**19.16.360 Licenses—Denial, suspension, revocation or refusal to renew—Hearing.** (1) Whenever the director shall have reasonable cause to believe that grounds exist for denial, suspension, nonrenewal, or revocation of a license issued or to be issued under this chapter, he shall notify the applicant or licensee in writing by certified or registered mail, with return receipt requested, stating the grounds upon which it is proposed that the license be denied, suspended, revoked, or not renewed.

(2) Within thirty days from the receipt of notice of the alleged grounds for denial, suspension, revocation, or lack of renewal, the applicant or licensee may serve upon the director a written request for hearing before the board. Service of a request for a hearing shall be by certified mail and shall be addressed to the director at his office in Thurston county. Upon receiving a request for a hearing, the director shall fix a date for which the matter may be heard by the board, which date shall be not less than thirty days from the receipt of the request for such hearing. If no request for hearing is made within the time specified, the license shall be deemed denied, suspended, revoked, or not renewed.

(3) Whenever a licensee who has made timely and sufficient application for the renewal of a license, receives notice from the director that it is proposed that his or its license is not to be renewed, and said licensee requests a hearing under subsection (2) of this section, the licensee's current license shall not expire until the last day for seeking review of the board's decision expires or if judicial review of the board's decision is sought until final judgment has been entered by the superior court, or in the event of an appeal or appeals, until final judgment has been entered by the last appellate court in which review has been sought. [1973 1st ex.s. c 20 § 4; 1971 ex.s. c 253 § 27.]

**19.16.380 Administrative procedure act—Application.** Except as specifically provided in this chapter, the rules adopted and the hearings conducted shall be in accordance with the provisions of chapter 34.04 RCW (Administrative Procedure Act). [1971 ex.s. c 253 § 29.]

**19.16.390 Personal service of process outside state.** Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which has had the impact in this state which this chapter reprehends. Such persons shall be deemed to have thereby submitted themselves to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185. [1971 ex.s. c 253 § 30.]

**19.16.400 Investigations or proceedings—Powers of director or designees—Contempt.** (1) The director may initiate and conduct investigations as may be reasonably necessary to establish the existence of any

alleged violations of or noncompliance with the provisions of this chapter or any rules and regulations issued hereunder. For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(2) If any individual fails to obey a subpoena or obeys a subpoena but refuses to give evidence, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him to appear before the court, to show cause why he should not be compelled to obey the subpoena and give evidence material to the matter under investigation. The failure to obey an order of the court may be punishable as contempt. [1973 1st ex.s. c 20 § 5; 1971 ex.s. c 253 § 31.]

**19.16.410 Rules, orders, decisions, etc.** The director may promulgate rules, make specific decisions, orders and rulings, including therein demands and findings, and take other necessary action for the implementation and enforcement of his duties under this chapter. [1971 ex.s. c 253 § 32.]

**19.16.420 Copy of this chapter, rules and regulations available to licensee.** On or about the first day of February in each year, the director shall cause to be made available at reasonable expense to a licensee a copy of this chapter, a copy of the current rules and regulations of the director, and board, and such other materials as the director or board prescribe. [1971 ex.s. c 253 § 33.]

**19.16.430 Violations—Operating collection agency without a license—Penalty—Return of fees or compensation.** (1) Any person who knowingly operates as a collection agency without a license or knowingly aids and abets such violation is punishable by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year or both.

(2) Any person who operates as a collection agency in the state of Washington without a valid license issued pursuant to this chapter shall not charge or receive any fee or compensation on any moneys received or collected while operating without a license or on any moneys received or collected while operating with a license but received or collected as a result of his or its acts as a collection agency while not licensed hereunder. All such moneys collected or received shall be forthwith returned to the owners of the accounts on which the moneys were paid. [1973 1st ex.s. c 20 § 6; 1971 ex.s. c 253 § 34.]

**19.16.440 Violations of RCW 19.16.110 and 19.16.250 are unfair and deceptive trade practices under chapter 19.86 RCW.** The operation of a collection agency without a license as prohibited by RCW 19.16.110 and the commission by a licensee or an employee of a licensee of an act or practice prohibited by RCW 19.16.250 are declared to be unfair acts or practices or unfair

methods of competition in the conduct of trade or commerce for the purpose of the application of the Consumer Protection Act found in chapter 19.86 RCW. [1973 1st ex.s. c 20 § 7; 1971 ex.s. c 253 § 35.]

**19.16.450 Violation of RCW 19.16.250—Additional penalty.** If an act or practice in violation of RCW 19.16.250 is committed by a licensee or an employee of a licensee in the collection of a claim, neither the licensee, the customer of the licensee, nor any other person who may thereafter legally seek to collect on such claim shall ever be allowed to recover any interest, service charge, attorneys' fees, collection costs, delinquency charge, or any other fees or charges otherwise legally chargeable to the debtor on such claim: *Provided*, That any person asserting the claim may nevertheless recover from the debtor the amount of the original claim or obligation. [1971 ex.s. c 253 § 36.]

**19.16.460 Violations may be enjoined.** Notwithstanding any other actions which may be brought under the laws of this state, the attorney general or the prosecuting attorney of any county within the state may bring an action in the name of the state against any person to restrain and prevent any violation of this chapter. [1971 ex.s. c 253 § 37.]

**19.16.470 Violations—Assurance of discontinuance—Effect.** The attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter from any person engaging in or who has engaged in such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in the alternative, in Thurston county.

Such assurance of discontinuance shall not be considered an admission of a violation for any purpose; however, proof of failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter for the purpose of securing an injunction as provided for in RCW 19.16.460: *Provided*, That after commencement of any action by a prosecuting attorney, as provided therein, the attorney general may not accept an assurance of discontinuance without the consent of said prosecuting attorney. [1971 ex.s. c 253 § 38.]

**19.16.480 Violation of injunction—Civil penalty.** Any person who violates any injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1971 ex.s. c 253 § 39.]

**19.16.900 Provisions cumulative—Violation of RCW 19.16.250 deemed civil.** The provisions of this chapter shall be cumulative and nonexclusive and shall

not affect any other remedy available at law: *Provided*, That the violation of RCW 19.16.250 shall be construed as exclusively civil and not penal in nature. [1971 ex.s. c 253 § 40.]

**19.16.910 Severability—1971 ex.s. c 253.** If any section or provision of this act shall be adjudged to be invalid or unconstitutional such adjudication shall not affect the validity of the act as a whole, or any section, provisions, or part thereof not adjudged invalid or unconstitutional. [1971 ex.s. c 253 § 41.]

**19.16.920 Provisions exclusive—Authority of political subdivisions to levy business and occupation taxes not affected.** (1) The provisions of this chapter relating to the licensing and regulation of collection agencies shall be exclusive and no county, city, or other political subdivision of this state shall enact any laws or rules and regulations licensing or regulating collection agencies.

(2) This section shall not be construed to prevent a political subdivision of this state from levying a business and occupation tax upon collection agencies maintaining an office within that political subdivision if a business and occupation tax is levied by it upon other types of businesses within its boundaries. [1971 ex.s. c 253 § 42.]

**19.16.930 Effective date—1971 ex.s. c 253.** This act shall become effective January 1, 1972. [1971 ex.s. c 253 § 44.]

**19.16.940 Short title.** This chapter shall be known and may be cited as the "Collection Agency Act". [1971 ex.s. c 253 § 45.]

**19.16.950 Section headings.** Section headings used in this chapter shall not constitute any part of the law. [1971 ex.s. c 253 § 46.]

## Chapter 19.18 COMIC BOOKS

Sections	
19.18.010	Declaration of policy.
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19.18.100	Licenses—Refusal, suspension, revocation—Complaint—Hearing—Appeal.
19.18.110	Copies of comic books to be supplied to supervisor.
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19.18.130	Prohibited acts—Wholesale dealers—Conditions of sale or delivery.
19.18.140	Penalties.
19.18.900	Severability—1955 c 282.

*Obscene publications, etc.: Chapter 9.68 RCW.*

**19.18.010 Declaration of policy.** The publication, and distribution of crime comic books is a basic factor in impairing the moral and mental health of minors. Such publication, sale and distribution, being detrimental to the ethical development of minors, contributes to their delinquency and is a source of crime. Therefore the legislature hereby finds and declares that the provisions hereinafter enacted are essential to the public interest. [1955 c 282 § 1.]

**19.18.020 Declaration of police power—Chapter to be liberally construed.** This chapter shall be deemed and exercise of the police power of the state for the protection of the welfare, mental health, peace, morals and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose. [1955 c 282 § 2.]

**19.18.030 Definitions.** For the purposes of this chapter the following words shall have the following definitions:

(1) "Wholesale" means a sale by a publisher, wholesale dealer, distributor or jobber to a person who sells, or intends to sell direct to the user; "wholesale dealer" means a publisher, wholesale dealer, distributor or jobber;

(2) "Retail" means a sale to the ultimate user; and "retail dealer" means a person who sells to the ultimate user, but who receives a portion of the comic books he sells from unlicensed wholesale dealers, or from wholesale dealers outside the state;

(3) "Dealer" means any wholesale or retail dealer;

(4) "Comic book" means any book, magazine or pamphlet, sold or distributed for profit, a major part of which consists of drawings depicting or telling a story of a real or fanciful event or series of events, with a substantial number of said drawings setting forth the spoken words of the characters with pointers, or brackets, or enclosures, or by such other means as will plainly indicate the character speaking such words: *Provided, however,* That no comic section of any regularly published daily or weekly newspaper shall be deemed to be a "comic book" for the purposes of this chapter;

(5) "Supervisor" means the supervisor of children and youth services. [1955 c 282 § 3.]

**19.18.040 Supervisor to enforce chapter—Rules—Personnel.** The supervisor of children and youth services shall, with the advice and guidance of the council for children and youth, enforce the provisions of this chapter and shall, with the advice and guidance of the council for children and youth, adopt reasonable rules and regulations to carry this chapter into effect. The appointment of personnel to assist in the administration of this chapter shall be done in accordance with the provisions of \*RCW 43.19.290 through 43.19.360. [1955 c 282 § 14.]

\*Reviser's note: "RCW 43.19.290 through 43.19.360" were repealed by 1959 c 28 § 72.98.040. See RCW 43.19.290 through 43.19.440, Table of Disposition of former RCW Sections.

**19.18.050 Presumption that minors will read or look at comic books.** For the purposes of this chapter, all comic books shall be presumed to be appealing to and likely to be read or looked at by minors under the age of eighteen. This presumption may not be overcome by statements to the effect that the comic book was not intended for juveniles under the age of eighteen years. [1955 c 282 § 5.]

**19.18.060 Licenses—Compliance required—Penalty.** It shall be unlawful for any person, firm or corporation to sell or have in his possession with intent to sell, any comic book which would appeal to, or be likely to be read or looked at by minors under the age of eighteen, at wholesale or retail, without having a valid and subsisting wholesale dealer's or retail dealer's license; or for any licensed wholesale dealer to make any sale, other than at wholesale; or for any licensed retail dealer to make any sale other than at retail. Any dealer violating this section shall be guilty of a misdemeanor. Upon a second conviction for such violation, the dealer shall be punished as for a gross misdemeanor, and upon a third conviction as for a felony. [1955 c 282 § 4.]

**19.18.070 Licenses—Fees.** The fee for a wholesale dealer's license shall be one hundred dollars, and the fee for a retail dealer's license shall be one dollar. A separate license shall be required for each store, warehouse, or place of business from which sales are made. [1955 c 282 § 6.]

**19.18.080 Licenses—Dealers—Refusal, suspension, revocation, length of.** Subject to the following limitations, the supervisor may refuse to issue a dealer a license, or may suspend or revoke such license, whenever he shall find that the dealer has violated any of the provisions of this chapter or of RCW 9.68.010. This shall be in addition to any penalties imposed by the court. For the first offense, the license may be suspended for not more than one year; for the second offense, for not less than six months nor more than two years; for the third offense, for not less than one year nor more than three years. For the fourth offense, the license may be permanently revoked. For the purpose of this section, all violations occurring the same calendar week shall be deemed a single offense. [1955 c 282 § 10.]

**19.18.090 Licenses—Wholesale dealers—Refusal, suspension, revocation.** The supervisor shall refuse to issue a wholesale dealer's license to any applicant, or if the license has already been granted, shall revoke the same, if it shall appear that any wholesale dealer, whose license has been revoked or suspended, has a beneficial interest in the business of the applicant, or if it shall appear that the applicant is the successor in interest to all or a part of the business and good will of a wholesale dealer, whose license has been revoked or suspended. [1955 c 282 § 12.]

**19.18.100 Licenses—Refusal, suspension, revocation—Complaint—Hearing—Appeal.** Upon receipt of a complaint or other information by the

supervisor that an applicant should not be licensed or that a dealer has violated any of the provisions of this chapter, he may call a hearing to give the person affected an opportunity to show cause why his application for license should not be refused or why his license should not be revoked or suspended. Notice of the hearing shall be given in writing by registered mail to the holder or applicant for such license and shall designate a time and place for the hearing before the supervisor which shall be not less than ten days from the date of the notice. The supervisor may require the attendance of any witnesses or documents by issue of subpoenas, and shall make a record of all proceedings and testimony. Should the supervisor decide that an existing license should be suspended or revoked or that an application for issuance of a license should be denied the applicant or licensee may, within thirty days from the date of the decision of the supervisor, appeal to the superior court of the county of the aggrieved person's residence for a review of the record of the decision, filing a notice of appeal with the clerk of the superior court and at the same time filing a copy of such notice with the supervisor. On receipt of such notice, the supervisor shall prepare, certify and forward to the court the record of the proceedings. No license may be revoked or suspended and no application for license may be denied without a prior hearing held as herein provided. [1955 c 282 § 11.]

**19.18.110 Copies of comic books to be supplied to supervisor.** Each wholesale dealer, within ten days after distributing any issue of any comic book to any retail dealer, shall supply three copies of each such issue to the supervisor. Any person purchasing any issue of any comic book from a source outside the state shall, in a similar manner, submit three copies thereof to the supervisor prior to retail sale. [1955 c 282 § 13.]

**19.18.120 Prohibited acts—Dealers.** No dealer shall print, publish, design, prepare, import, distribute, exhibit, display, sell or possess with intent to sell, or offer to sell any comic book appealing to or likely to be read or looked at by minors under the age of eighteen years which is obscene or indecent; or which is devoted to the publication or exploitation of fictional or actual deeds of violent bloodshed, lust, crime or immorality by characters depicted either as real or fanciful, human or inhuman, so massed as reasonably to tend to incite minors to violence or depraved or immoral acts against the person. [1955 c 282 § 7.]

**19.18.130 Prohibited acts—Wholesale dealers—Conditions of sale or delivery.** No wholesale dealer shall as a condition to a sale or delivery for resale of any paper, magazine, book, periodical or publication require that the purchaser or consignee receive for resale any comic book appealing to or likely to be read or looked at by minors under the age of eighteen years. [1955 c 282 § 8.]

**19.18.140 Penalties.** Any dealer who sells or distributes commercially or has in his possession with intent to sell, distribute commercially, or who otherwise offers for

sale or commercial distribution any comic book appealing to or likely to be read or looked at by minors under the age of eighteen years, which is devoted to the publication and exploitation of fictional or actual deeds of violent bloodshed, lust, crime or immorality by characters depicted either as real or fanciful, human or inhuman, so massed as reasonably to tend to incite minors to violence or depraved or immoral acts against the person, shall be guilty of a misdemeanor. Upon a second conviction for violation of this section, the dealer shall be punished as for a gross misdemeanor, and upon a third conviction as for a felony. [1955 c 282 § 9.]

**19.18.900 Severability—1955 c 282.** If any section or provision of this chapter shall be adjudged to be invalid, such adjudication shall not affect the validity of this chapter as a whole or any section, provision or part thereof not adjudged to be invalid. [1955 c 282 § 15.]

## Chapter 19.20 CONVICT-MADE GOODS

### Sections

19.20.010	Definitions.
19.20.020	Sale of convict-made goods prohibited—Exceptions—Rehabilitation and vocational program goods excepted, compensation.
19.20.060	Violations—Penalty.
19.20.900	Police power of state.
19.20.910	Severability—1927 c 294.

*Convict labor: State Constitution Art. 2 § 29.*

*Institutional industries commission: Chapter 72.60 RCW.*

*Labor by prisoners: RCW 9.95.090, 72.64.060-72.64.090.*

**19.20.010 Definitions.** The words "open market" as used in this chapter shall mean all sales or exchanges conducted or transacted through the medium of stores, shops, sales offices, sales agents or agencies, whether retail or wholesale. [1933 c 178 § 3; RRS § 5847-4.]

**19.20.020 Sale of convict-made goods prohibited—Exceptions—Rehabilitation and vocational program goods excepted, compensation.** The selling, offering, keeping, exposing or displaying for sale on the open market within this state of any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part, by convicts or prisoners, except convicts or prisoners on parole, probation, or work or training release is hereby prohibited except that, any fair, bazaar, or other public gathering of a temporary nature which displays and offers for sale hand crafted articles, may provide adequate space for the display and sale of hand crafted articles manufactured as result of occupational therapy by persons confined to any institution in this state. Such space shall be furnished without charge. The secretary of social and health services shall credit the proceeds derived from the sale of such articles to the institutions where produced or manufactured to be deposited in a revolving fund to be expended for the purchase of supplies, materials, and equipment for the production of hand crafted articles, provided, that any resident of a state correctional institution who produces a hand crafted article with supplies or materials purchased or procured by him, not at state expense, may be



permitted by the secretary, or his designee, to sell such article under the authority of this section, the proceeds to be deposited in his personal account.

No goods, wares, or merchandise manufactured, produced, or mined, in whole or in part, by convicts or prisoners of other states, except convicts or prisoners on parole or probation, shall be shipped into this state to be sold on the open market in this state, or sold to or exchanged with an institution of this state, or any of its political subdivisions: *Provided*, This chapter shall not prohibit the sale to or exchange between penal, reformatory, or custodial institutions and/or departments of this state, including any of its political subdivisions, for use or consumption by said institutions, of goods, wares, or merchandise manufactured, produced, or mined, in whole or in part, by convicts or prisoners of the state of Washington: *And provided, further*, This chapter shall not apply to commodities manufactured by federal, penal, or correctional institutions for use by the federal government and/or goods displayed or sold within any of the penal, reformatory, or custodial institutions of the state for the benefit of the inmates thereof. Nothing in this section shall be construed to apply to goods, wares, or merchandise manufactured, produced, or mined, in whole or in part by convicts or prisoners employed by employers other than the state of Washington under work, training, or similar rehabilitative or vocational programs. Furthermore, such convict or prisoner participants shall be compensated at fair market prevailing wages and shall be entitled to all benefits and privileges in their employment to the same extent as other employees of their employer to the maximum extent which is not inconsistent with the rules, regulations, and conditions imposed upon the convict or the prisoner as the result of confinement or probation, except that such participants shall not receive unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW. Procedures for distribution of earnings shall be developed for the department of social and health services in accordance with RCW 72.65.050. All participants who become engaged in employment or training under this program shall not be considered as agents, employees, or involuntary servants of [the] state, and the department of social and health services is prohibited from entering into a contract with any person, copartnership, company, or corporation for the labor of any participant under its jurisdiction. The institutional industries commission as established by chapter 72.60 RCW shall be responsible for overall supervision of any in prison work opportunities organized in accordance with this section. [1975 c 44 § 1; 1970 ex.s. c 73 § 1; 1933 c 178 § 1; 1927 c 294 § 1; RRS § 5847-1. Formerly RCW 19.20.020 through 19.20.050.]

**19.20.060 Violations—Penalty.** Any person, firm or corporation who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and

imprisonment. [1933 c 178 § 2; 1927 c 294 § 2; RRS § 5847-2.]

**19.20.900 Police power of state.** This law is enacted by the state of Washington in the exercise of its sovereign and police powers. [1933 c 178 § 5; RRS § 5847-6.]

**19.20.910 Severability—1927 c 294.** Adjudication of invalidity of any of the sections of this act or any part of any section thereof, shall not affect or impair the validity of any other of said sections or remaining part of any of said sections. [1927 c 294 § 3; RRS § 5847-3.]

## Chapter 19.24 COPYRIGHT PROTECTION

Sections	
19.24.010	Performance, selling, of copyrighted music or drama forbidden, when.
19.24.020	Unlawful combinations—Per piece royalties—Parting with right to restrict use.
19.24.040	Listing of pooled copyrighted works required.
19.24.050	Lists of copyrighted works—Open to public—Publication provided for.
19.24.055	Filing required of nonresident and foreign copyright holders—Exception.
19.24.060	Declaration of purpose of legislation—Situs of copyrighted work.
19.24.100	Doing business defined—Amenability to process—Service on nonresidents.
19.24.140	Injunction—Receivership—Anti-monopoly board—Escheat.
19.24.280	Special appearances deemed general.
19.24.290	Violations—Penalties.
19.24.300	Concurrent injunctions or receiverships.
19.24.900	Severability—General repealer—1937 c 218.

**19.24.010 Performance, selling, of copyrighted music or drama forbidden, when.** It shall be unlawful for any person who, without the consent of the owner thereof, shall cause to be publicly performed for profit any dramatic composition, or dramatic musical composition commonly called an opera, or other copyrighted works, or any substantial part thereof, which has been copyrighted under the laws of the United States, or for any person to knowingly participate in the performance or representation of any substantial part thereof, or by knowingly selling a substantial copy or any substantial part thereof. [1937 c 218 § 2; RRS § 3802-1.]

**19.24.020 Unlawful combinations—Per piece royalties—Parting with right to restrict use.** It shall be unlawful for two or more persons holding or claiming separate copyrighted works under the copyright laws of the United States, either within or without the state, to band together, or to pool their interests for the purpose of fixing the prices on the use of said copyrighted works, or to pool their separate interests or to conspire, federate, or join together, for the purpose of collecting fees in this state, or to issue blanket licenses in this state, for the right to commercially use or perform publicly their separate copyrighted works: *Provided, however*, Such persons may join together if they issue licenses on rates assessed on a per piece system of usage: *Provided, further*, This chapter shall not apply to any one individual

author or composer or copyright holder or owner who may demand any price or fee he or she may choose for the right to use or publicly perform his or her individual copyrighted work or works: *Provided, further*, Such per piece system of licensing must not be in excess of any per piece system in operation in other states where any group or persons affected by this chapter does business, and all groups and persons affected by this chapter, are prohibited from discriminating against the citizens of this state by charging higher and more inequitable rates per piece for music licenses in this state than in other states: *Provided, further*, Where the owner, holder, or person having control of any copyrighted work has sold the right to the single use of said copyrighted work, where its sole value is in its use for public performance for profit, and has received any consideration therefor, either within or without the state, then said person or persons shall be deemed to have sold and parted with the right to further restrict the use of said copyrighted work or works. [1937 c 218 § 3; RRS § 3802-2. Formerly RCW 19.24.020 and 19.24.030.]

**19.24.040 Listing of pooled copyrighted works required.** In the event two or more persons holding separate copyrighted musical works, or any rights flowing therefrom, whether by assignment, agency agreements, or by any form of agreement, pool their interests, or combine, or conspire, federate, or join together in any way, whether for a lawful purpose or otherwise, a complete list of their copyrighted works or compositions shall be filed once each year in the office of the secretary of state of the state of Washington, together with a list of the prices charged or demanded for their various copyrighted works; no payment or filing fee shall be required by the secretary of state, and said persons, corporations, or association, foreign or domestic shall state therein under oath, that said list is a complete catalogue of the titles of their claimed compositions, whether musical or dramatic or of any other classification, and in addition to stating the name and title of the copyrighted work it shall recite therein the date each separate work was copyrighted, and the name of the author, the date of its assignment, if any, or the date of the assignment of any interest therein, if any, and the name of the publisher, the name of the present owner, together with the addresses and residences of all parties who have at any time had any interest in such copyrighted work. [1967 c 40 § 1; 1937 c 218 § 4; RRS § 3802-3. FORMER PART OF SECTION: 1937 c 218 § 6; RRS § 3802-5, now codified as RCW 19.24.055.]

**19.24.050 Lists of copyrighted works—Open to public—Publication provided for.** The foregoing list of names and titles, provided for in the preceding section, shall be made available by the secretary of state to all persons for examination, in order that any user of copyrighted works in this state may know the rights and the titles to such copyrighted works as may be claimed by any of said combinations, pools, associations, or persons as aforesaid; said lists shall be prepared so that all persons may avoid using said copyrighted compositions, if they so desire, and may avoid conflict therewith, and

avoid committing innocent infringements of said works; and in order to further effectuate the copyright laws of the United States, the secretary of state shall, if he deems it necessary to protect the citizens of this state from committing innocent violations of the copyright laws of the United States, publish such list once each year in a newspaper of general circulation, in order that all citizens of the state may respect any and all individual rights granted by the United States copyright laws. [1937 c 218 § 5; RRS § 3802-4.]

**19.24.055 Filing required of nonresident and foreign copyright holders—Exception.** No person, corporation, or association, domestic or foreign, whether doing business in this state as hereinafter defined or not, shall be absolved from the foregoing duty of filing said list of holdings as required in the preceding sections of this chapter, if their music or copyrighted works are used commercially in this state, or have been used herein, whether originating from a point within the state or from without, and as long as any rendition thereof is received or heard within the state, or is intended to be so received by the originator of any musical program: *Provided, however*, Any individual owner of a copyrighted work or works, not a party to or not connected in any way with any pool, conspiracy, combination, or groups, or association of persons, as prohibited by this chapter, need not file any such list. [1937 c 218 § 6; RRS § 3802-5. Formerly RCW 19.24.040, part.]

**19.24.060 Declaration of purpose of legislation—Situs of copyrighted work.** It is hereby declared that the production and creation of music and the commercial use of music and of copyrighted works within this state, whether originating at a point from within or without the state, as long as the same shall be rendered and publicly received within the confines of this state, whether mechanically or by radio communication, is a business clothed and affected with the public interest, and the adult educational advantages engendered by the public use of music and in its creation, makes this business one of public necessity, and necessary for the education and training of the youth of this state; that many abuses are practiced under a false guise of federal protection which only the state with its police power can easily and lawfully restrain, and in order to prohibit, discourage, and prevent monopolistic practices, and to prevent extortion, to encourage free bargaining between the citizens of this state with each other and with those without the state, and in order to give greater effect to the constitutional provisions relating to monopoly and price fixing, and in the general interest of the public, therefore, the legislature in the interest of the peace and dignity of the state, in the interest of good morals and the general welfare of the people of this state, and for greater educational advantages to the public, declares that said business shall be subject to the police power and reasonable regulation of the state government, and such police and regulating power shall be administered by the courts and other officials of this state in a manner consistent with, in aid of, and never in conflict with, the copyright laws of the United States. The provisions of

this chapter, and the administration thereof, shall at all times effectuate the enforcement, the true intent, and meaning of the United States copyright laws in order to prevent abuses from being practiced within this state from points within or from points without the state, by any individual, corporation, or organizations, who attempt to use the federal courts as innocent instrumentalities in the furtherance of any systematic campaign or scheme designed to illegally fix prices for the commercial use of copyrighted works in this state through the use of extortionate means and terrorizing practices based on threats of suits, and an abuse of both state and federal process, all of which are declared to be in violation of this chapter and of the state Constitution; it is further declared that any person or persons, or combines, as aforesaid, who shall violate this chapter shall be deemed to have used their property within this state in such a way that the same shall have acquired a legal situs, analogous to the situs of other personal tangible property within the state, even though separate from the domicile and residence of the owner: *Provided, further,* The legal situs of any copyrighted work is coextensive about the state, and a copyrighted work used or sold for public use or public performance for profit, if intended to be heard from a point without the state or from a point within the state, is hereby declared to be a commercial commodity, and its legal situs is hereby declared to be within the state of Washington. [1937 c 218 § 7; RRS § 3802-6. Formerly RCW 19.24.060 through 19.24.090.]

**19.24.100 Doing business defined—Amenability to process—Service on nonresidents.** All persons, groups, corporations, associations, foreign or domestic, violating this chapter, shall be deemed to have been doing business within this state and amenable to the process of the state courts, when any such persons, combinations, or groups shall have issued licenses, either from within or from without the state, for the privilege of using commercially and publicly any copyrighted work or works pooled in a common group or entity, or when any of the functions of said entity, organization, pool, or combine, is or has been performed in this state; and the business of spying upon and the warning of users of the copyrighted works of such combinations, in addition to the presence within the state of such persons, and the activities of such persons or their agents at any time or occasion for the detection of infringements within this state, shall be conclusive evidence that such combinations and persons, even though nonresidents, have accepted the privileges of doing business within this state, and such persons, if they abide by the provisions of this chapter, shall be granted the privilege of conducting business within this state in a legal manner, and may invoke the benefits of the state government and its political subdivisions in their behalf, and they may use all of the privileges available to the citizens of this state in general, and the use at any time of any general privilege available to any citizen of this state, by any of such agents, their attorneys, or representative, or investigator, or by any aider and abettor, or any nonresident person, group, entity, or combination as aforesaid, shall be deemed to be an acceptance of the provisions of this chapter; and

all licensees of any violator of this chapter shall be deemed as aiders and abettors of said persons and subject to the provisions of this chapter unless they forthwith indicate their obedience herewith; and the acceptance of the general privileges of the state of Washington by any nonresident copyright holder or owner, or combination, defendant, or person, or organization of any kind, or entity, through an investigator, attorney, agent, representative, or through any aider and abettor as herein defined, and the acceptance by such persons of the rights, police protection, or of any general privilege conferred by the law of this state to any of its citizens, including the use of the roads and highways, or the privileges of any of its political subdivisions, as evidenced by their presence within the state at any time, shall be deemed equivalent to and construed to be an appointment by such nonresident or nonresidents, as the case may be, of the secretary of state of the state of Washington to be his or their true and lawful attorney upon whom may be served all summons and processes against him or them and growing out of a violation of this chapter, in which said nonresident may be involved, and said acceptance of the privileges of this state, as aforesaid, shall be a signification of his or their agreement that any summons or process against him or them which is so served shall be of the same legal force and validity as if served on him or them personally within the state of Washington. Service of such summons or process shall be made by leaving a copy thereof with a fee of five dollars with the secretary of the state of Washington, or in his office, and such service shall be sufficient and valid personal service upon any such nonresident defendant, copyright holder or owner, persons, or defendants, combination, entity, or organization, as aforesaid: *Provided,* That notice of such service and a copy of the summons of process shall be forthwith sent by registered mail requiring personal delivery, by the prosecutor bringing any action under this chapter, to any defendant at his last known address, and the defendant's return receipt and the prosecutor's affidavit of compliance herewith are appended to the process and entered as a part of the return thereof: *Provided, further,* The court in which any action is brought may order such continuances as may be necessary to afford any nonresident defendant or groups, or entity, a reasonable opportunity to defend the action: *Provided, further,* The secretary of state shall keep a record of all such summons and process which shall show the day and time of service; and valid personal service shall thus be had on nonresident persons or individuals, entities, firms, or corporations violating this chapter. [1973 c 108 § 1; 1937 c 218 § 8; RRS § 3802-7. Formerly RCW 19.24-.100 through 19.24.130.]

**19.24.140 Injunction—Receivership—Anti-monopoly board—Escheat.** In the event any person, or groups of persons, or any combination or pool as aforesaid, whether a nonresident corporation, person, or an association, or domestic, refuse to abide by the provisions hereof, or attempt to evade or render ineffectual the true enforcement of any provision of this chapter,

then the prosecuting attorney of any county where complaint is made of any violation, shall institute injunction proceedings against said persons in the superior court, and valid personal service may be had upon any nonresident defendant as set forth in RCW 19.24.100; and the court shall enjoin all persons from violating the provisions of this chapter and the constitutional provisions prohibiting price fixing, monopolies, and combinations, and all copyrighted works and the public performance rights thereto when sold or used for profit are hereby declared to be a commercial commodity, and all persons, aiders and abettors, and agents, shall be enjoined by the court from aiding or furthering in any way a continuation of any violation of this chapter, either by the payment of money to said defendants or in any way; and if any defendant or defendants persist in defying the judgment of the court, the court shall, in order to effectuate its judgment and orders, order three days' notice be given said defendant or defendants, as the case may be, by having a copy of such notice served on the secretary of state as heretofore provided if defendants are without the state, or served personally if within the state, and have the same published in some daily paper in the state of general circulation, and at the end of said period, if any defendant or defendants refuse to obey the order of the court, then the court shall appoint the county auditor as receiver for the copyrighted works and property of defendants, tangible or intangible, and of all other effects and moneys derived therefrom, and the receiver shall take over and preserve the commercial rights to all of said copyrighted works, together with such other property of any defendant, combination, pool, corporation, or entity through which they are acting, that he can locate within the state, and the receiver shall administer the same under the direction of the court, and said receivership shall be considered only as an incident to the main injunction suit of the prosecutor, and for the purpose of enforcing the court's orders; the said receiver shall seize the copyrighted works of all of the copyright holders and owners in said defendant combination, including all of the rights to suits for infringement and damages in both state and federal courts, and all choses of action, and all sums due on contracts and licenses, and hold the same subject to the order of the court; and all persons holding licenses or contracts with any defendant combination or entity, shall pay the fees and sums due thereon to the receiver for such time as the court may need to effectuate the provisions of this chapter, and to compel any defendant to abide herewith: *Provided*, Any sums paid on licenses violating this chapter shall only be continued in the court's discretion or until such time as the court can award defendants complete and full due process of law before entering a final order thereon, or until such time as a legal and equitable system of licensing can be determined according to the subsequent provisions of this chapter: *Provided, further*, In the event any defendant or defendants attempt to withdraw their said copyright works or property from the state in order to violate and render this chapter or the court's order ineffectual, or to deprive the citizens of this state of such commodity, or to hamper the enforcement of any provision of this chapter, or to injure any

citizen or user of music in any way, then the court shall immediately order the receiver to compile a complete list of all of the copyrighted works of said defendants which have been used in this state, and the court shall then convene the state anti-monopoly board, as herein now created, consisting of the state treasurer and the state auditor, and said board shall meet in the county where the suit is filed, and the superior judge hearing the cause shall be an advisory member of said board; and said board, of which the state treasurer shall be chairman, shall have only one function, the discouragement of price fixing and monopolies, and the court shall then submit to said board the single question of the establishment of license rates for the use of those copyrighted works controlled by the defendants so proceeded against; and for the purpose of aiding in the abolition of monopolies and price fixing, and preventing violations of this chapter, the board shall determine a fair and just rate that the receiver should charge for the single and separate public performance for profit of each copyrighted work or works of said defendants, on a per piece system and basis of licensing, and the court shall not be deemed thereby to have divested itself of any of its jurisdiction by so doing; after determining such rate, the said anti-monopoly board shall immediately advise the receiver of its findings, and of its fair rate, and the same shall be filed of record in the cause, and the receiver may then, if said finding is approved by the court, issue licenses for the use of said music at such approved rate on a basis of so much money per each time a piece of music is played or used in a public performance for profit; that said property shall be thus administered by the receiver for a period of one year, or until such time as the defendants, or the individual copyright owners of any combination so proceeded against take oath that they will abide by the rulings of the court and the provisions of this chapter; and all fees and funds collected by the receiver shall be turned over to the state treasurer, and no receiver's fees or attorney's fees shall be allowed, and the prosecuting attorney shall be the attorney for the receiver, and the state treasurer shall keep said money in a separate and special fund, subject to the order of the court only for whatever portion thereof that the court may order used to defray the actual expenses of the board and the receivership; at the end of one year, if the defendants and copyright owners or holders in any combination thus proceeded against, continue to wilfully disobey the court's orders, then the court shall issue an order, which shall be published in three public places, to the effect that unless the defendants obey all of the orders of the court within ten days from the date of said order, that the court will proceed to permanently deprive said defendants and each of them of their property; and the court shall then order said defendants to show cause within ten days why they should not be involuntarily compelled to assign all of their copyrighted works to the receiver forthwith, and to show cause why all of the funds as collected in the manner aforesaid from licenses, together with all of the copyrighted works including the performing rights thereto of said defendants and members of said combine, should not escheat and be forfeited forever to the state of Washington, and be subject

thereafter to administration by the state in the same manner as all other personal property belonging to the state of Washington; if any of said defendants and copyright holders, or owners, do appear before the end of said ten day period, and take oath that they will abide by the future orders of the court and the provisions of this chapter, then the court shall release their copyrighted works and order the state treasurer to return any and all of their money which has been received or seized: *Provided, however,* The court shall retain such jurisdiction over their persons for such time as the court may deem necessary to insure strict compliance with the terms of the court's judgment and the provisions of this chapter; if any of said defendants or copyright owners or holders shall ignore or refuse to obey the show cause order, as aforesaid, or fail to appear at the end of ten days as ordered and abide by the court's judgment, then the court shall make an order and enter judgment to the effect that all of the copyrighted works, including the performing rights thereto, of said defendants and the members of any defendant combination, shall be construed as having been escheated and forfeited to the state of Washington, and the court shall thereupon appoint some officer of the court to execute an involuntary assignment of all the legal and equitable titles to all of the copyrighted works of each of said defendants and members of any defendant combination to the receiver, in the event the defendants or any of their members fail to execute a voluntary assignment, and the receiver shall immediately file said involuntary assignment at the United States Copyright Office at Washington, D.C.; and the court shall then order the receiver to close the estate, and turn the titles to said copyrighted works over by proper assignment from the receiver to the state treasurer of the state of Washington, who shall thereafter administer, issue licenses for the use of the same in a manner consistent with this chapter, and conserve the same as state personal property in his possession, and according to law; and any funds left in the state treasury from said receivership shall escheat and be forfeited to the state and become part of the general fund: *Provided, further,* The state treasurer shall make a report to the legislature on each biennium of the amount of money received from such licensing and the amount of property he has on hand through the enforcement of this chapter. [1937 c 218 § 9; RRS § 3802-8. Formerly RCW 19.24-.140 through 19.24.270.]

**19.24.280 Special appearances deemed general.** That in the event any person, or any of the defendants, or nonresidents, or nonresident copyright owners or holders, are proceeded against as herein outlined, and are served with process according to law, or any nonresident is served with process as outlined in the preceding sections of this chapter, and if any of said defendants, or persons, or aiders and abettors named as defendants, appear in any such proceeding by counsel or otherwise, or institute any special proceeding attacking such proceeding, or make any motion therein, either special or general, or if any of them appear to obtain the judgment of the court solely upon the sufficiency of the service of process upon

them, or upon any phase or particularity of said injunction proceedings, such special proceeding or appearance, or motion, or appearance, as the case may be, shall nevertheless be deemed as a general appearance even though the process may have been insufficient, and said parties and defendants as may thus appear in the action, for any reason or cause, whether they seek special or affirmative relief, shall thereafter be subject to the general orders and jurisdiction of the court for all purposes, and if any of said defendants or persons appear in any court proceeding instituted to effectuate this chapter solely for the purpose of challenging the validity of service of process upon them they shall be deemed to have surrendered themselves and as having submitted to the general jurisdiction of the court: *Provided, however,* This section shall not be construed as denying, and no attempt shall be made at any time in any proceeding in connection with the enforcement of this chapter, to restrain or deny any of said defendants, resident or nonresident, copyright holders or owners, or any person or members of any defendant combination, entity, pool, or monopoly of their rights or property without full and complete due process of law. [1937 c 218 § 10; RRS § 3802-9.]

**19.24.290 Violations—Penalties.** Every person, in addition to the other penalties provided in this chapter, who violates or who procures, or aids or abets in the violating of any provision of this chapter, or who conspires to render ineffectual any valid order or decision of any court in the enforcement of this chapter, or who procures, conspires with, or aids or abets any person or persons in his or their failure to obey the provisions of this chapter, or to render ineffectual any valid order of any court in connection with the enforcement of this chapter shall be deemed guilty of a gross misdemeanor, and upon conviction, shall be punished by a fine not exceeding five hundred dollars, or imprisonment in the county jail for not more than six months, or both such fine and imprisonment. [1937 c 218 § 11; RRS § 3802-10.]

**19.24.300 Concurrent injunctions or receiverships.** In the event more than one injunction suit provided for in this chapter is instituted in this state, in different counties by different prosecuting attorneys, but against the same defendants, the respective superior judges hearing the causes may issue orders against said defendants in any county, but in the event any of the various county proceedings enter into the state of receivership, as herein provided, then the judges hearing the respective causes shall order those causes where the defendants are the same, to be consolidated in one action in one particular county, and in such county as the judges may decide, to the end that only one receiver may be appointed for the entire state for the property of the same defendant or defendants. [1937 c 218 § 13; RRS § 3802-12.]

**19.24.900 Severability—General repealer—1937 c 218.** In case any part or portion of this chapter shall be held unconstitutional, such holding shall not affect the validity of this chapter as a whole or any other part or

portion of this chapter, and if any clause, sentence, paragraph, subdivision, section or part of this chapter shall for any reason be adjudged invalid, such judgment shall not affect, impair, or invalidate the remainder of the chapter, but shall be strictly confined in its operation and holding to the specific clause, sentence, paragraph, subdivision, section, or part thereof, directly involved in the controversy in which such judgment shall have been rendered; and all other acts and laws in conflict herewith are hereby repealed. [1937 c 218 § 12; RRS § 3802-11.]

### Chapter 19.25 REPRODUCED SOUND RECORDINGS

Sections	
19.25.010	"Owner" defined.
19.25.020	Reproduction of sound without consent of owner unlawful—Fine and penalty.
19.25.030	Chapter nonapplicable to commercial or educational radio or television—Broadcast only.
19.25.040	Chapter nonapplicable to public records.
19.25.900	Severability—1974 ex.s. c 100.

**19.25.010 "Owner" defined.** As used in this chapter, "owner" means the owner of the master recording, master disc, master tape, master film, or other device used for reproducing recorded sound on a phonograph record, disc, tape, film, or other material on which sound is recorded and from which the transferred recorded sound is directly or indirectly derived. [1974 ex.s. c 100 § 1.]

**19.25.020 Reproduction of sound without consent of owner unlawful—Fine and penalty.** A person commits a gross misdemeanor punishable by a fine not to exceed one thousand dollars and imprisonment not to exceed one year and confiscation of illegal stock, if he:

(1) Reproduces for sale any sound recording without the written consent of the owner of the master recording; or

(2) Knowingly sells or offers for sale or advertises for sale any sound recording that has been reproduced without the written consent of the owner of the master recording. [1974 ex.s. c 100 § 2.]

**19.25.030 Chapter nonapplicable to commercial or educational radio or television—Broadcast only.** This chapter shall not be applicable to the reproduction of any sound recording that is used or intended to be used only for broadcast by commercial or educational radio or television stations. [1974 ex.s. c 100 § 3.]

**19.25.040 Chapter nonapplicable to public records.** This chapter shall not be applicable to the reproduction of a sound recording defined as a public record of any court, legislative body, or proceedings of any public body, whether or not a fee is charged or collected therefor. [1974 ex.s. c 100 § 4.]

**19.25.900 Severability—1974 ex.s. c 100.** If any provision of this 1974 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 100 § 5.]

### Chapter 19.26 PRERECORDED RECORDING OR TAPE

Sections	
19.26.010	Sale without name and address of recorder unlawful—Penalty.
19.26.020	Each violation separate offense—Fine.

**19.26.010 Sale without name and address of recorder unlawful—Penalty.** It shall be unlawful and a misdemeanor for any retailer in this state to sell or offer to sell any prerecorded sound or audio recording tape or any prerecorded video recording or tape unless such recording or tape bears the actual name and address of the recorder on its face or package: *Provided*, That this chapter shall not be applicable to any said recording or tape that is intended to be used for broadcast by commercial or educational radio or television stations. Each and every sale of such recording or tape which does not bear the actual name and address of the recorder shall constitute a separate violation of this chapter. [1971 ex.s. c 113 § 1.]

**19.26.020 Each violation separate offense—Fine.** Each and every violation of RCW 19.26.010 shall constitute a separate offense and be subject to a fine not to exceed one hundred dollars. [1971 ex.s. c 113 § 2.]

### Chapter 19.27 STATE BUILDING CODE

Sections	
19.27.010	Short title.
19.27.020	Purposes—Objectives—Standards.
19.27.030	National codes and standards—Adoption by reference—Conflicts.
19.27.040	Cities and counties authorized to amend state building code—Adopt revisions—Limitations.
19.27.050	Administration and enforcement.
19.27.060	Local building regulations superseded—Exceptions.
19.27.070	State building code advisory council—Established—Membership—Reports—Travel expenses.
19.27.080	Chapters of RCW not affected.
19.27.090	Local jurisdictions reserved.
19.27.100	Cities, towns, counties may impose fees different from state building code.
19.27.110	Uniform fire code—Administration and enforcement by counties, other political subdivisions and municipal corporations—Fees.
19.27.111	RCW 19.27.080 not affected.
19.27.120	Buildings or structures having special historical or architectural significance—Exception.

*Building permits: RCW 36.21.040-36.21.080.*

#### Counties

*adoption of building, plumbing, electrical codes, etc: RCW 36.32.120(7).  
building codes: Chapter 36.43 RCW.*

**19.27.010 Short title.** This chapter shall be known as the State Building Code Act. [1974 ex.s. c 96 § 1.]

**19.27.020 Purposes—Objectives—Standards.** The purpose of this chapter is to provide building codes throughout the state. This chapter is designed to effectuate the following purposes, objectives and standards:

(1) To promote the health, safety and welfare of the occupants or users of buildings and structures and the general public.



(2) To require minimum performance standards and requirements for construction and construction materials, consistent with accepted standards of engineering, fire and life safety.

(3) To require standards and requirements in terms of performance and nationally accepted standards.

(4) To permit the use of modern technical methods, devices and improvements.

(5) To eliminate restrictive, obsolete, conflicting, duplicating and unnecessary regulations and requirements which could unnecessarily increase construction costs or retard the use of new materials and methods of installation or provide unwarranted preferential treatment to types or classes of materials or products or methods of construction.

(6) To provide for standards and specifications for making buildings and facilities accessible to and usable by physically handicapped persons.

(7) To consolidate within each authorized enforcement jurisdiction, the administration and enforcement of building codes. [1974 ex.s. c 96 § 2.]

**19.27.030 National codes and standards—Adoption by reference—Conflicts.** On and after January 1, 1975, there shall be in effect in all cities, towns and counties of the state a state building code which shall consist of the following codes which are hereby adopted by reference:

(1) Uniform Building Code and Related Standards, 1973 edition, published by the International Conference of Building Officials;

(2) Uniform Mechanical Code, 1973 edition, including Chapter 22, Fuel Gas Piping, Appendix B, published by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials;

(3) The Uniform Fire Code with appendices thereto, 1973 edition, published by the International Conference of Building Officials and the Western Fire Chiefs Association;

(4) The Uniform Plumbing Code, 1973 edition, published by the International Association of Plumbing and Mechanical Officials: *Provided*, That chapter 11 of such code is not adopted: *Provided*, That notwithstanding any wording in this code, nothing in this code shall apply to the installation of any gas piping, water heaters, or vents for water heaters; and

(5) The rules and regulations adopted by the council establishing standards for making buildings and facilities accessible to and usable by the physically handicapped or elderly persons as provided for in RCW 70.92.100 through 70.92.160.

In case of conflict among the codes enumerated in subsections (1), (2), (3) and (4) of this section, the first named code shall govern over those following. [1975 1st ex.s. c 110 § 8; 1974 ex.s. c 96 § 3.]

**Effective date—1975 1st ex.s. c 110 §§ 8, 9 and 10:** "Sections 8, 9, and 10 of this amendatory act shall take effect on July 1, 1976." [1975 1st ex.s. c 110 § 12.] This applies to the 1975 amendments to RCW 19.27.030 and 19.27.040 and to the repeal of RCW 70.92.010-70.92.060 and RCW 70.92A.010-70.92A.060.

**Public buildings and accommodations, provisions for elderly and handicapped:** Chapter 70.92 RCW.

**19.27.040 Cities and counties authorized to amend state building code—Adopt revisions—Limitations.** On and after January 1, 1975, the governing body of each city, town or county is authorized to amend the state building code as it applies within its jurisdiction in all such respects as shall be not less than the minimum performance standards and objectives enumerated in RCW 19.27.020, including, the authority to adopt any subsequent revisions to the codes in RCW 19.27.030 (1), (2), (3), and (4).

Nothing in this section shall authorize any modifications of the requirements of RCW 70.92.100 through 70.92.160. [1975 1st ex.s. c 110 § 9; 1974 ex.s. c 96 § 4.]

**Effective date—1975 1st ex.s. c 110:** The effective date of the amendment to this section by 1975 1st ex.s. c 110 § 9 was July 1, 1976, see note following RCW 19.27.030.

**19.27.050 Administration and enforcement.** The state building code provided for in this chapter shall be administered and enforced by the respective governmental authorities. Any governmental subdivision not having a local building department may contract with another governmental subdivision or inspection agency approved by the local governmental body for administration and enforcement of the state building code within its jurisdictional boundaries in accordance with chapter 39.34 RCW. [1974 ex.s. c 96 § 5.]

**19.27.060 Local building regulations superseded—Exceptions.** (1) Except as permitted or provided otherwise under the provisions of RCW 19.27.040 and subsections (3) and (4) of this section, the state building code supersedes all county, city or town building regulations containing less than the minimum performance standards and objectives contained in the state building code.

(2) Except as permitted or provided otherwise under the provisions of RCW 19.27.040 and subsections (3) and (4) of this section, the state building code shall be applicable to all buildings and structures including those owned by the state or by any other governmental subdivision.

(3) The governing body of each city, town or county may limit the application of any rule or regulation or portion of the state building code to include or exclude specified classes or types of buildings or structures, according to use, occupancy, or such other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable: *Provided*, That in no event shall fruits or vegetables of the tree or vine stored in buildings or warehouses, constitute combustible stock for the purposes of application of the uniform fire code.

(4) The provisions of this chapter shall not apply to any building four or more stories high with an F occupancy as defined by the uniform building code, chapter 6, 1973 edition, and with a fire insurance classification rating of 1, 2, or 3 as defined by a recognized fire rating bureau or organization. [1975 1st ex.s. c 282 § 2; 1974 ex.s. c 96 § 6.]



**19.27.070 State building code advisory council—Established—Membership—Reports—Travel expenses.** There is hereby established a state building code advisory council to be appointed by the governor.

(1) The state building code advisory council shall consist of the director of the department of labor and industries, or his designee, and the insurance commissioner, or his designee, and thirteen additional members who shall be broadly representative of the general public, local government, and of the industries and professions concerned with building design and construction. The council may include state officials as ex officio, non-voting members. The board shall report annually to the governor and the legislature on the operation and administration of this chapter.

(2) Members shall receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 59; 1974 ex.s. c 96 § 7.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**19.27.080 Chapters of RCW not affected.** Nothing in \*this 1974 act shall affect the provisions of chapters 19.28, 43.22, 70.77, 70.79, 70.87, 48.48, 18.20, 18.46, 18.51, 28A.02, 28A.04, 70.41, 70.62, 70.75, 70.108, 71.12, 74.15, 70.94, or 76.04 RCW or grant rights to duplicate the authorities provided under chapters 70.94 or 76.04 RCW [1975 1st ex.s. c 282 § 1; 1974 ex.s. c 96 § 8.]

**\*Reviser's note:** "this 1974 act" consists of RCW 19.27.010–19.27.090, and 70.92A.060. RCW 70.92A.060 was repealed by 1975 1st ex.s. c 110 § 10, effective July 1, 1976.

**19.27.090 Local jurisdictions reserved.** Local land use and zoning requirements, building setbacks, side and rear-yard requirements, site development, property line requirements, subdivision requirements, and local fire zones are specifically reserved to local jurisdictions notwithstanding any other provision of \*this 1974 act. [1974 ex.s. c 96 § 9.]

**\*Reviser's note:** "this 1974 act", see note following RCW 19.27.080.

**19.27.100 Cities, towns, counties may impose fees different from state building code.** Nothing in this chapter shall prohibit a city, town, or county of the state from imposing fees different from those set forth in the state building code. [1975 1st ex.s. c 8 § 1.]

**19.27.110 Uniform fire code—Administration and enforcement by counties, other political subdivisions and municipal corporations—Fees.** Each county government shall administer and enforce the uniform fire code in the unincorporated areas of the county: *Provided*, That any political subdivision or municipal corporation providing fire protection pursuant to RCW 14.08.120 shall, at its sole option, be responsible for administration and enforcement of the uniform fire code on its facility. Any fire protection district or political subdivision may, pursuant to chapter 39.34 RCW, the interlocal cooperation act, assume all or a portion of the administering responsibility and coordinate and cooperate with the

county government in the enforcement of the uniform fire code.

It is not the intent of RCW 19.27.110 and 19.27.111 to preclude or limit the authority of any city, town, county, fire protection district, state agency, or political subdivision from engaging in those fire prevention activities with which they are charged.

It is not the intent of the legislature by adopting the state building code or RCW 19.27.110 and 19.27.111 to grant counties any more power to suppress or extinguish fires than counties currently possess under the Constitution or other statutes.

Each county is authorized to impose fees sufficient to pay the cost of inspections, administration, and enforcement pursuant to RCW 19.27.110 and 19.27.111. [1975-'76 2nd ex.s. c 37 § 1.]

**19.27.111 RCW 19.27.080 not affected.** Nothing in RCW 19.27.110 shall affect the provisions of RCW 19.27.080. [1975-'76 2nd ex.s. c 37 § 2.]

**19.27.120 Buildings or structures having special historical or architectural significance—Exception.** Repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, or continued use of a building or structure may be made without conformance to all of the requirements of the codes adopted under RCW 19.27.030, when authorized by the appropriate building official, provided:

(1) The building or structure has been designated by official action of a legislative body as having special historical or architectural significance; and

(2) The restored building or structure will be less hazardous, based on life and fire risk, than the existing building. [1975-'76 2nd ex.s. c 11 § 1.]

## Chapter 19.28 ELECTRICIANS AND ELECTRICAL INSTALLATIONS

Sections	
19.28.010	Electrical wiring requirements—General— Exceptions.
19.28.060	Rules, regulations, and standards.
19.28.065	Electrical advisory board.
19.28.070	Enforcement—State electrical inspectors—Qualifications—Salaries and expenses.
19.28.120	License required—General or specialty licenses— Fees—Application—Bond—Cash deposit in lieu of bond.
19.28.123	Board of electrical examiners—Created—Membership—Examinations—Meetings—Compensation—Travel expenses.
19.28.125	Electrical contractors—Designee of firm to take examination—Certification duration, renewal, nontransferable.
19.28.180	Licensee's bond—Action on—Priorities—Cash deposit, payment from.
19.28.190	Actions—Local permits—Proof of licensure.
19.28.200	Licensing—Exemptions.
19.28.210	Inspections—Notice to repair and change—Disconnection—Entry—Concealment—Connection to utility—Labels, fees.
19.28.250	Inspection reports.
19.28.260	Nonconforming installations—Disputes—Reference to board of appeals.

- 19.28.270 Electrical board of appeals—Qualifications—  
Vacancies—Quorum—Compensation—Travel  
expenses—Decisions final.
- 19.28.300 Electrical board of appeals—Request for rulings—  
Fee—Costs.
- 19.28.310 Revocation or suspension of license—Grounds—  
Appeal to board.
- 19.28.330 Electrical license fund.
- 19.28.340 Liability for injury or damage.
- 19.28.350 Violations—Penalty.
- 19.28.360 RCW 19.28.210 inapplicable in certain cities and towns  
and electricity supply agency service areas.
- 19.28.370 Chapter inapplicable to telegraph or telephone companies  
exercising certain functions.
- 19.28.380 Chapter inapplicable within rights of way of state high-  
ways if equal or better standards enforced.
- 19.28.900 Severability—1935 c 169.
- 19.28.910 Effective date—1963 c 207.

*Electrical construction: Chapter 19.29 RCW.*

*Electricians, licensing, etc.: Chapter 18.37 RCW.*

*Mechanics' and materialmen's lien, licensed contractors agents of  
owner in establishment of rights: RCW 60.04.010.*

*State building code: Chapter 19.27 RCW.*

**19.28.010 Electrical wiring requirements—General—Exceptions.** From and after the taking effect of this chapter all wires and equipment, and installation thereof, to convey electric current and installations of apparatus to be operated by said current, in, on, or about buildings, or structures, except for telephone and telegraph, radio and television wires and equipment, and television antenna installations, signal strength amplifiers and coaxial installations pertaining thereto shall be in strict conformity with the provisions of this chapter, the statutes of the state of Washington, the rules and regulations issued by the department of labor and industries under the authority of the state statutes, and shall be in conformity with approved methods of construction for safety to life and property. The regulations and articles as laid down in the National Electrical Code, as approved by the American Standards Association, and in the national electrical safety code, as approved by the American Standards Association, and other installation and safety regulations approved by the American Standards Association, as duly modified or supplemented by rules and regulations issued by the department of labor and industries in furtherance of safety to life and property under authority hereby granted, shall be prima facie evidence of such approved methods; and all materials, devices, appliances and equipment used in such installations shall be of a type which shall conform to applicable standards or be indicated as acceptable by the established standards of the Underwriters' Laboratories, Inc.; or other equivalently national recognized authorities: *Provided*, That this chapter shall not limit the authority or power of any city or town to enact and enforce under power and authority given by law, any ordinance, rule or regulations requiring an equal, a higher or better standard of construction and equal, higher or better standard of materials, devices, appliances and equipment than that required by this chapter, but in such city or town having such equal, higher or better standard such installations and materials, devices, appliances and equipment shall be in accordance with the ordinance, rule, or regulation of such city or town: *Provided*, That nothing in this chapter shall be construed as requiring or permitting

the connection of any conductor of any electric circuit with a pipe, which is connected with or designed to be connected with a waterworks piping system, without the consent of the person or persons legally responsible for the operation and maintenance of such waterworks piping system. [1965 ex.s. c 117 § 1; 1963 c 207 § 1; 1935 c 169 § 1; RRS § 8307-1. Formerly RCW 19.28.010 through 19.28.050.]

**19.28.060 Rules, regulations, and standards.** On or before the first day of January, 1936, the director of labor and industries shall obtain an authentic copy of the national electrical code as approved by the American Standards Association, and an authentic copy of any applicable regulations and standards of the Underwriters' Laboratories, Inc., or other nationally recognized testing laboratory prescribing rules, regulations and standards for electrical materials, devices, appliances and equipment, and shall annually thereafter on or before the first day of January obtain a new set of such rules, regulations and standards including therein any modifications and changes that have been made during the previous year in such rules, regulations and standards. The director of labor and industries, after consulting with the electrical advisory board and receiving the board's recommendations pursuant to RCW 19.28.065, shall adopt and promulgate reasonable rules and regulations in furtherance of safety to life and property. All such aforementioned rules, regulations and standards shall be kept on file in the office of the director of labor and industries; compliance with such rules, regulations and standards shall be prima facie evidence of compliance with the provisions of this chapter. The director of labor and industries upon request, shall deliver to all persons, firms, or corporations licensed under the provisions of this chapter, a certified copy of such rules, regulations and standards. Any printed copy of such rules, regulations and standards certified by the director of labor and industries as being a full, true and correct copy of such rules, regulations and standards on file in his office shall be accepted in any court of the state of Washington as conclusive evidence of such approved methods, regulations and standards. [1965 ex.s. c 117 § 2; 1935 c 169 § 10; RRS § 8307-10.]

**19.28.065 Electrical advisory board.** There is hereby created an electrical advisory board, consisting of seven members to be appointed by the governor with the advice of the director of labor and industries as herein provided. It shall be the purpose and function of the board to advise the director on all matters pertaining to the enforcement of this chapter including, but not limited to standards of electrical installation, minimum inspection procedures, the adoption of rules and regulations pertaining to the electrical inspection division: *Provided, however*, That no rules or regulations shall be amended or repealed until the electrical advisory board has first had an opportunity to consider any proposed amendments or repeals and had an opportunity to make recommendations to the director relative thereto. The members of the electrical advisory board shall be selected and appointed as follows: One member shall be

an employee or officer of a corporation or public agency generating or distributing electric power; one member shall be an employee or officer of a corporation or firm engaged in the business of making electrical installations; one member shall be an employee, or officer, or representative of a corporation or firm engaged in the business of manufacturing or distributing electrical materials, equipment or devices; one member shall be a person not related to the electrical industry to represent the public; one member shall be a recognized electrician; one member shall be a licensed professional engineer qualified to do business in the state of Washington; and one member shall be the state chief electrical inspector. Each of the members except the public member and the chief electrical inspector shall be appointed by the governor from among a list of individuals nominated by nonprofit organizations or associations representing individuals, corporations, or firms engaged in the business classification from which such member shall be selected. The regular term of each member shall be four years: *Provided, however,* The original board shall be appointed for the following terms: The first term of the member representing a corporation or public agency generating or distributing electric power shall serve four years; the member representing the installer of electrical equipment or appliances shall serve three years; the member representing a manufacturer or distributor of electrical equipment or devices shall serve three years; the member representing the public shall serve two years; the member selected as the recognized electrician shall serve for two years; the member selected as the licensed professional electrical engineer shall serve for one year. Thereafter, the governor shall appoint or reappoint board members for terms of four years and to fill vacancies created by the completion of the terms of the original members. The governor shall also fill vacancies caused by death, resignation, or otherwise for the unexpired term of such members by appointing their successors from the same business classification. The same procedure shall be followed in making such subsequent appointments as is provided for the original appointments. The board, at this first meeting shall elect one of its members to serve as chairman. Any person acting as the chief electrical inspector shall serve as secretary of the board during his tenure as chief state inspector. Meetings of the board shall be called at the discretion of the director of labor and industries. Each member of the board shall be paid twenty-five dollars for each day or portion thereof that the board is in session and each member shall receive in addition thereto travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended which shall be paid out of the electrical license fund, upon vouchers approved by the director of labor and industries. [1975-'76 2nd ex.s. c 34 § 60; 1969 ex.s. c 71 § 1; 1963 c 207 § 5.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**19.28.070 Enforcement—State electrical inspectors—Qualifications—Salaries and expenses.** The director of labor and industries of the state of

Washington and the officials of all incorporated cities and towns where electrical inspections are required by local ordinances shall have power and it shall be their duty to enforce the provisions of this chapter in their respective jurisdictions. The director of labor and industries shall have power to appoint an electrical inspector, and such assistant inspectors as he shall deem necessary to assist him in the performance of his duties. All electrical inspectors appointed by the director of labor and industries shall be electricians of not less than four years experience in installing and maintaining electrical equipment, or four years experience as electrical inspectors for a municipality, or two years electrical training in a college of electrical engineering of recognized standing, and two years continuous practical electrical experience in installation work or four years of electrical training in a college of electrical engineering of recognized standing. Such state inspectors shall be paid such salary as the director of labor and industries shall determine, together with their travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. The expenses of the director of labor and industries and the salaries and expenses of state inspectors incurred in carrying out the provisions of this chapter shall be paid entirely out of the electrical license fund, upon vouchers approved by the director of labor and industries. [1975-'76 2nd ex.s. c 34 § 61; 1967 c 88 § 1; 1935 c 169 § 3; RRS § 8307-3. Formerly RCW 19.28.070 through 19.28.110.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**19.28.120 License required—General or specialty licenses—Fees—Application—Bond—Cash deposit in lieu of bond.** (1) It shall be unlawful for any person, firm, or corporation to engage in, conduct or carry on the business of installing wires or equipment to convey electric current, or installing apparatus to be operated by such current as it pertains to the electrical industry, without having an unrevoked, unsuspended and unexpired license so to do, issued by the director of labor and industries in accordance with the provisions of this chapter. All such licenses shall expire on the thirty-first day of December following the day of their issue. Application for such license shall be made in writing to the department of labor and industries, accompanied by the required fee, and shall state the name and address of the applicant, and in case of firms, the names of the individuals composing the firm, and in case of corporations, the name of the managing officials thereof, and shall state the location of the place of business of the applicant and the name under which such business is conducted, and shall state the type of license sought, whether a general or specialty electrical license, and if the latter, the type of specialty. A general electrical license shall grant to the holder thereof the right to engage in, conduct or carry on, the business of installing wires or equipment to carry electric current, and installing apparatus, or install material to fasten, or insulate such wires or equipment, to be operated by such current, in any and all places in the state of Washington. A specialty electrical license shall grant to the holder thereof a limited right to

engage in, conduct or carry on, the business of installing wires or equipment to carry electrical current, and installing apparatus, or to install material to fasten, or insulate such wires or equipment, to be operated by such current in the state of Washington as expressly allowed by such license. The application for such license shall be accompanied by a bond in the sum of three thousand dollars with the state of Washington named as obligee therein, with good and sufficient surety, to be approved by the attorney general. Said bond shall at all times be kept in full force and effect, and any cancellation or revocation thereof, or withdrawal of the surety therefrom, shall ipso facto revoke and suspend the license issued to the principal until such time as a new bond of like tenor and effect shall have been filed and approved as herein provided. Upon approval of said bond by the attorney general, the director of labor and industries shall on the next business day thereafter deposit the fee accompanying said application in the fund to be known and designated as the "electrical license fund". Upon approval of said bond by the attorney general, he shall transmit the same to the state electrical inspection division, who shall file said bond in the office, and upon application furnish to any person, firm or corporation a certified copy thereof, under seal, upon the payment of a fee of two dollars. Said bond shall be conditioned that in any installation of wires or equipment to convey electrical current, and apparatus to be operated by such current, the principal therein will comply with the provisions of this chapter and in case such installation is in an incorporated city or town having an ordinance, building code, or regulations prescribing equal, a higher or better standard, manner or method of such installation that the principal will comply with the provisions of such ordinance, building code or regulations governing such installations as may be in effect at the time of entering into a contract for such installation. Said bond shall be conditioned further that the principal will pay for all labor, including employee benefits, and material furnished or used upon such work, taxes and contributions to the state of Washington, and all damages that may be sustained by any person, firm or corporation due to a failure of the principal to make such installation in accordance with the provisions of this chapter, or any ordinance, building code or regulation applicable thereto. In lieu of the surety bond required by this section the license applicant may file with the director a cash deposit or other negotiable security acceptable to the director: *Provided, however,* If the license applicant has filed a cash deposit, the director shall deposit such funds in a special trust savings account in a commercial bank, mutual savings bank, or savings and loan association and shall pay annually to the depositor the interest derived from such account. The board of electrical examiners shall certify to the director of labor and industries all persons who are entitled to either a general or specialty electrical contractors' qualifying certificate. The director of labor and industries shall issue general or specialty licenses to applicants meeting all of the requirements of this chapter. The provisions of this chapter relating to the licensing of any person, firm, or corporation, including the requirement of a bond with

the state of Washington named as obligee therein and the collection of a fee therefor, shall be exclusive and no political subdivision of the state of Washington shall require or issue any licenses or bonds nor charge any fee for the same or a similar purpose: *Provided,* That no person holding more than one specialty license under the provisions of this chapter shall be required to pay an annual fee for more than one such license or shall be required to post more than one three thousand dollar bond or an equivalent cash deposit or other negotiable security.

(2) From and after \*the effective date of this 1975 amendatory act to obtain a general or specialty contractor license the applicant must designate an individual who currently possesses an electrical qualifying certificate as a general electrical contractor or as to the specialty electrical contractor license for which application has been made. To obtain such a certificate an individual shall pass an examination as set forth in RCW 19.28-.123 or, alternately, the applicant was a duly licensed electrical contractor at any time during 1974. As to those applicants who were duly licensed as electrical contractors by the state of Washington at any time during 1974 such applicants shall be entitled to receive a general electrical contractor qualifying certificate without examination. [1975 1st ex.s. c 195 § 1; 1975 1st ex.s. c 92 § 1; 1974 ex.s. c 188 § 1; 1971 ex.s. c 129 § 1; 1969 ex.s. c 71 § 2; 1969 c 30 § 1. Prior: 1967 ex.s. c 15 § 1; 1967 c 88 § 2; 1965 ex.s. c 117 § 3; 1963 c 207 § 2; 1959 c 325 § 1; 1935 c 169 § 4; RRS § 8307-4; prior: 1919 c 204 §§ 1, 2. Formerly RCW 19.28.120 through 19.28.170.]

\*Reviser's note: Section 1 of chapter 92, Laws of 1975 1st ex. sess. which amended this section was vetoed. This partial veto of said chapter 92 was overridden by chapter 195, Laws of 1975 1st ex. sess. Both chapters contained emergency sections.

Chapter 92, Laws of 1975 1st ex. sess. passed the House of Representatives on May 1, 1975; passed the Senate on May 15, 1975; and was partially vetoed May 27, 1975.

The partial veto was overridden by the House of Representatives on May 30, 1975 and by the Senate on June 8, 1975.

**Severability**—1975 1st ex.s. c 195, 1975 1st ex.s. c 92: "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 195 § 4; 1975 1st ex.s. c 92 § 4.]

**Effective date**—1974 ex.s. c 188: "The effective date of this 1974 amendatory act is July 1, 1974." [1974 ex.s. c 188 § 6.] This applies to RCW 19.28.123, 19.28.125 and to the 1974 amendment to RCW 19.28.120.

**Severability**—1974 ex.s. c 188: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 188 § 5.] This applies to RCW 19.28.123, 19.28.125 and to the 1974 amendment to RCW 19.28.120.

**Effective date**—1971 ex.s. c 129: "The effective date of this 1971 amendatory act shall be December 1, 1971." [1971 ex.s. c 129 § 3.] This applies to the 1971 amendments to RCW 19.28.120 and 19.28.210.

**19.28.123 Board of electrical examiners**—**Created**—**Membership**—**Examinations**—**Meetings**—**Compensation**—**Travel expenses.** There is hereby created a board of electrical examiners consisting of nine members to be appointed by the governor. It

shall be the purpose and function of this board to establish in addition to a general electrical contractors' license, such classifications of specialty electrical contractors' licenses as it deems appropriate with regard to individual sections pertaining to state adopted codes in chapter 19.28 RCW. In addition, it shall be the purpose and function of this board to establish and administer written examinations for general electrical contractors' qualifying certificates and the various specialty electrical contractors' qualifying certificates. Examinations shall be designed to reasonably insure that general and specialty electrical contractor's qualifying certificate holders are competent to engage in and supervise the work covered by this statute and their respective licenses. The examinations shall include questions from the following categories to assure proper safety and protection for the general public: (1) Safety, (2) state electrical code, and (3) electrical theory. Meetings of the board shall be held quarterly on the first Monday of February, May, August and November of each year. Each member of the board shall be paid twenty-five dollars for each day or portion thereof that the board is in session and each member shall also receive travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, which shall be paid out of the electrical license fund, upon vouchers approved by the director of labor and industries. [1975-'76 2nd ex.s. c 34 § 62; 1975 1st ex.s. c 195 § 2; 1975 1st ex.s. c 92 § 2; 1974 ex.s. c 188 § 2.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**Severability—1975 1st ex.s. c 195, 1975 1st ex.s. c 92:** See note following RCW 19.28.120.

**Effective date—Severability—1974 ex.s. c 188:** See notes following RCW 19.28.120.

**19.28.125 Electrical contractors—Designee of firm to take examination—Certification duration, renewal, nontransferable.** Each applicant, other than an individual, shall designate a supervisory employee or member of the firm to take the required examination. This person shall be designated as administrator under the license. No person may qualify as administrator for more than one contractor. If the relationship of the administrator with the applicant firm or corporation is terminated, the license is void within ninety days unless another administrator is qualified by the board. A certification issued under this chapter is valid for the calendar year of issuance, unless revoked or suspended, and further is non-transferable. The certification may be renewed without examination by appropriate application unless the certificate has been revoked, suspended, or not renewed within thirty days: *Provided*, That an individual holding any certification(s) under the provisions of this chapter shall not be required to pay annual fees for more than one certificate. [1975 1st ex.s. c 195 § 3; 1975 1st ex.s. c 92 § 3; 1974 ex.s. c 188 § 4.]

**Severability—1975 1st ex.s. c 195, 1975 1st ex.s. c 92:** See note following RCW 19.28.120.

**Effective date—Severability—1974 ex.s. c 188:** See notes following RCW 19.28.120.

**19.28.180 Licensee's bond—Action on—Priorities—Cash deposit, payment from.** Any person, firm, or corporation sustaining any damage or injury by reason of the breach of the conditions of said bond by the principal therein may bring an action against the surety named therein, with or without joining in said action the principal named in said bond; said action may be brought in the superior court of any county in which the principal on said bond resides or transacts business, or in the county in which the work was performed as a result of which the breach is alleged to have occurred; said action shall be maintained and prosecuted as other civil actions. No action on said bond, or failure to bring action thereon shall waive the right of any person, firm or corporation to sue the principal named in said bond for any damage or injury sustained by reason of the failure of the principal in said bond to comply with the provisions of this chapter: Claims or actions against the surety on such bonds shall be paid in full in the following order of priority: (1) labor, including employee benefits, (2) materials and equipment used upon such work, (3) taxes and contributions due to the state, (4) damages sustained by any person, firm or corporation due to the failure of the principal to make the installation in accordance with the provisions of chapter 19.28 RCW, or any ordinance, building code, or regulation applicable thereto: *Provided*, That the total liability of the surety on any such bond shall not exceed the sum of three thousand dollars; and any such action shall be brought within one year from the completion of the work in the performance of which the breach is alleged to have occurred.

In the event that a cash or securities deposit has been made in lieu of the surety bond, and in the event of a judgment being entered against such depositor and deposit, the director shall upon receipt of a certified copy of a final judgment, pay said judgment from such deposit. [1969 ex.s. c 71 § 3; 1965 ex.s. c 117 § 4; 1935 c 169 § 5; RRS § 8307-5. Prior: 1919 c 204 § 4.]

**19.28.190 Actions—Local permits—Proof of licensure.** No person, firm or corporation engaging in, conducting or carrying on the business of installing wires or equipment to convey electric current, or installing apparatus to be operated by said current, shall be entitled to commence or maintain any suit or action in any court of this state pertaining to any such work or business, without alleging and proving that such person, firm or corporation held, at the time of commencing and performing such work, an unexpired, unrevoked and unsuspended license issued under the provisions of this chapter; and no city or town requiring by ordinance or regulation a permit before any such electrical work is installed, shall issue such permit to any person, firm or corporation not holding such license. [1935 c 169 § 6; RRS § 8307-6.]

**19.28.200 Licensing—Exemptions.** No license under the provision of this chapter shall be required from any person, firm, corporation or municipal corporation because of work in connection with the installation and/or maintenance of lines or wires for

transmission of electricity from the source of supply to the point of contact at the premises and/or property to be supplied, or for work in installing or maintaining or repairing on the premises of customers, service connections and meters, and other apparatus or appliances used in the measurement of the consumption of electricity by customers, or for work in connection with the lighting of streets, alleys, ways, or public areas or squares, or for the work of installing, maintaining or repairing wires, apparatus or appliances used in their business, or in making or distributing electricity, upon the property owned or operated and managed by them; or for the work of installing and repairing ignition or lighting systems for motor vehicles, or as exempted in RCW 19.28-.010. [1935 c 169 § 11; RRS § 8307-11.]

**19.28.210 Inspections—Notice to repair and change—Disconnection—Entry—Concealment—Connection to utility—Labels, fees.** The director of labor and industries, through the inspector, assistant inspector, or deputy inspector, is hereby empowered to inspect, and shall inspect, all wiring, appliances, devices and equipment to which this chapter applies. Nothing contained in this chapter shall be construed as providing any authority for any subdivision of government to adopt by ordinance any provisions contained or provided for in this chapter 19.28 RCW except those pertaining to cities and towns. Upon request, electrical inspections will be made by the electrical inspection department within forty-eight hours, excluding holidays, Saturdays and Sundays. If, upon written request, the electrical inspector fails to make an electrical inspection within twenty-four hours, the serving utility may immediately connect thereto, providing the necessary electrical safe wiring label is displayed. Whenever the installation of any such wiring, device, appliance or equipment is not in accordance with the requirements of this chapter, or is in such a condition as to be dangerous to life or property, the person, firm, or corporation owning, using or operating the same shall be notified by the director of labor and industries and shall within fifteen days, or such further reasonable time as may upon request be granted, make such repairs and changes as are required to remove the danger therefrom to life or property and to make the same conform to the provisions of this chapter. The director of labor and industries through such inspector, assistant inspector or any deputy inspector, is hereby empowered to disconnect or order the discontinuance of electrical service to such conductors or apparatus as is found to be in a dangerous or unsafe condition and not in accordance with the provisions of this chapter. Upon making such disconnection he shall attach thereto a notice stating that such conductors have been found dangerous to life or property or not in accordance with the requirements of this chapter; and it shall be unlawful for any person to reconnect such defective conductors or apparatus without the approval of the director of labor and industries, and until the same have been placed in a safe and secure condition, and in such condition as to comply with the requirements of this chapter. The director of labor and industries, through the electrical inspector, assistant inspector,

or any deputy inspector, shall have the right during reasonable hours to enter into and upon any building or premises in the discharge of his official duties for the purpose of making any inspection or test of the installation of new construction or altered electrical wiring, electrical devices, equipment or material contained thereon or therein. No electrical wiring or equipment subject to the requirements of this chapter shall be concealed until an inspection is applied for under this chapter and an inspection made and the work therein approved by the inspector making such inspection. It shall be the responsibility of those persons making electrical installations to obtain inspection and approval from an authorized representative of the director of labor and industries as required by this chapter, prior to requesting the electric utility to connect to said installation. Electric utilities may connect such said installations if approval is clearly indicated by certification of the safe wiring label required to be affixed to each installation or by equivalent means, except that, increased or relocated services may be reconnected immediately, at the discretion of the utility, before approval, provided a safe wiring label is displayed. The labels shall be furnished upon payment to the department of labor and industries. The director, subject to the recommendations and approval of the state electrical advisory board, shall set a schedule of license and safe wiring label fees which will cover the costs incurred by the department of labor and industries in the administration and enforcement of this chapter in accordance with the administrative procedures act, chapter 34.04 RCW: *Provided*, That no fee shall be charged for plug-in mobile homes, recreational vehicles, or portable appliances. [1971 ex.s. c 129 § 2; 1969 ex.s. c 71 § 4; 1967 c 88 § 3; 1965 ex.s. c 117 § 5; 1963 c 207 § 3; 1959 c 325 § 2; 1935 c 169 § 8; RRS § 8307-8. Formerly RCW 19.28.210 through 19.28.240.]

**Effective date—1971 ex.s. c 129:** See note following RCW 19.28.120.

*Above section inapplicable in certain cities and towns and electricity supply agency service areas: RCW 19.28.360.*

*Adoption of certain regulations proscribed: RCW 36.32.125.*

**19.28.250 Inspection reports.** If any inspection made under the provisions of this chapter requires any correction or change in the work inspected, a report thereon shall be made in writing by the inspector, in which report the corrections or changes required shall be plainly stated. A copy of such report shall be furnished to the person, firm, or corporation doing the installation work and a copy thereof filed in the office of the director of labor and industries. [1935 c 169 § 9; RRS § 8307-9.]

**19.28.260 Nonconforming installations—Disputes—Reference to board of appeals.** It shall be unlawful for any person, firm or corporation to install any electrical wiring, appliances, devices or equipment not in accordance with the standards prescribed by this chapter. In cases where the interpretation and application of the standards herein prescribed is in dispute, or



in doubt, the electrical board of appeals hereinafter provided for shall, upon application of any interested person, firm or corporation, determine the methods of installation and/or material, device, appliances or equipment to be used in the particular case submitted for its decision. [1935 c 169 § 2; RRS § 8307-2.]

**19.28.270 Electrical board of appeals—Qualifications—Vacancies—Quorum—Compensation—Travel expenses—Decisions final.** In case any decision under this chapter is required by an electrical board of appeals, the director of labor and industries shall designate and appoint such board, which shall consist of five qualified electricians of not less than four years experience, one of the members thereof shall be an employee or officer of a corporation generating and selling electrical power; one member thereof shall be a person, a member of a firm, or an officer of a corporation engaged in installing electrical wiring appliances or equipment as a contractor; one member thereof shall be a journeyman wireman; one member thereof shall be an electrical engineer regularly employed as such by some person, firm or corporation; and these four members shall elect the fifth member. No two members of said board shall be appointed from the same firm or officer or employee of the same person, firm, or corporation; and no member of said board shall be either a person or a member of any firm, or an officer of any corporation, or an employee of any person, firm or corporation interested in the matter which said board, when appointed, may be called upon to consider or decide. In case of inability of any member appointed to act in any matter the director of labor and industries shall appoint some other person qualified under this chapter in the place of such person. A majority of the members of such board shall constitute a quorum to transact any business or decide any matter submitted to such board; and decisions and rulings of the board shall be made by majority vote of the entire board. The decision of the board in all matters submitted to it shall be final, conclusive, and binding on all parties. Each member of the board shall be paid while in session five dollars each day and shall receive in addition thereto travel expenses, all of which shall be paid out of the deposit required in case of an appeal, or if such deposit be returned to the appellant as herein provided, or be insufficient for that purpose, such amounts shall be paid out of the \*electrical license fund, upon vouchers approved by the director of labor and industries. [1975-'76 2nd ex.s. c 34 § 63; 1935 c 169 § 12; RRS § 8307-12. Formerly RCW 19.28.270 through 19.28.290.]

\*Reviser's note: "electrical license fund", see note following RCW 19.28.330.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

**19.28.300 Electrical board of appeals—Request for rulings—Fee—Costs.** Any person, firm or corporation desiring a ruling or decision of the board of appeals on any question of interpretation of the rules, regulations and standards, or proper application of the

rules, regulations and standards prescribed by this chapter shall, in writing, notify the director of labor and industries of such desire and shall accompany the notice with a certified check payable to the director of labor and industries in the sum of fifty dollars; such notice shall specify the ruling or interpretation desired and the contention of such person, firm or corporation as to the proper interpretation or application on the question on which a ruling or decision is desired; and in event the board of appeals shall determine that the contention of the applicant for a decision or ruling was proper the certified check shall be returned to such applicant; otherwise the same shall be used so far as necessary in paying the expenses and per diem of the members of the board of appeals in connection with such matter; and any portion of said fifty dollars not used in paying the per diem and expenses of said board in said case shall, by the director of labor and industries, be paid into the electrical license fund. [1935 c 169 § 13; RRS § 8307-13.]

*Electrical license fund: See note following RCW 19.28.330.*

**19.28.310 Revocation or suspension of license—Grounds—Appeal to board.** The department [director] of labor and industries shall have power in case of gross and continued violation of the provisions of this chapter, to revoke, or suspend for such period as he may determine, any license issued under this chapter. Any such revocation or suspension shall be subject to review by an appeal to the electrical board of appeals hereinafter provided. Such appeal shall be taken within five days after notice of such revocation or suspension is given by mailing to the address of such licentiate as shown on the application for license, and shall be effected by filing a written notice of appeal with the department of labor and industries, accompanied by a certified check for fifty dollars, which shall be returned to the licentiate in event the decision of the department of labor and industries is not sustained by said board, otherwise to be applied by the department of labor and industries in the payment of the per diem and expenses of the members of such board incurred in such matter; and any balance remaining after payment of such per diem and expenses shall be paid into the electrical license fund. [1935 c 169 § 7; RRS § 8307-7. Formerly RCW 19.28.310 and 19.28.320.]

*Electrical license fund: See note following RCW 19.28.330.*

**19.28.330 Electrical license fund.** All sums received from licenses, or other sources, herein shall be paid to the state treasurer as ex officio custodian thereof and by him, as such custodian, placed in a special fund designated as the "electrical license fund," and by him paid out upon vouchers duly and regularly issued therefor and approved by the director of labor and industries. The said treasurer as ex officio custodian of said fund shall keep an accurate record of payments into, or receipts of, said fund, and of all disbursements therefrom. Said fund shall be charged with its pro rata share of the cost of administering said fund to be determined by the director



of labor and industries and the director of efficiency of this state. [1935 c 169 § 18; RRS § 8307-18.]

**Reviser's note:** (1) Duties of director of efficiency abolished and transferred to the director of finance, budget and business by 1935 c 176 §§ 23, 21; name of department of finance, budget and business changed to department of public institutions by 1947 c 114 § 5; department of public institutions superseded by department of institutions which certain duties transferred to department of general administration (RCW 43.19.015); department of institutions abolished and powers and duties transferred to department of social and health services (RCW 43.20A.500, 43.20A.210).

(2) The electrical license fund was abolished and superseded by the electrical licenses account in the state general fund, see RCW 43.79-.330 through 43.79.335.

**19.28.340 Liability for injury or damage.** Nothing contained in this chapter will be construed to relieve from or lessen the responsibility or liability of any person for injury or damage to person or property caused by or resulting from any defect of any nature in any electrical work performed by said person or in any electrical equipment owned, controlled, installed, operated or used by him; nor shall the state of Washington, or any officer, agent, or employee thereof incur or be held as assuming any liability by reason or in consequence of any permission, certificate of inspection, inspection or approval authorized herein, or issued or given as herein provided, or by reason of consequence of any things done or acts performed pursuant to any provision of this chapter. [1935 c 169 § 16; RRS § 8307-16.]

**19.28.350 Violations—Penalty.** Any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and shall be punishable by a fine of not less than fifty dollars, or not less than five days imprisonment or both such fine and imprisonment. Each day that any such violation shall continue shall be deemed a separate offense. [1935 c 169 § 14; RRS § 8307-14.]

**19.28.360 RCW 19.28.210 inapplicable in certain cities and towns and electricity supply agency service areas.** The provisions of RCW 19.28.210 shall not apply:

(1) Within the corporate limits of any incorporated city or town which has heretofore adopted and enforced or subsequently adopts and enforces an ordinance requiring an equal, higher or better standard of construction and of materials, devices, appliances and equipment than is required by this chapter: *Provided*, That such city or town shall require that its electrical inspectors meet qualifications provided for state electrical inspectors in accordance with RCW 19.28.070.

(2) Within the service area of an electricity supply agency owned and operated by a city or town which is supplying electricity and enforcing a standard of construction and materials outside its corporate limits at the time this act takes effect: *Provided*, That such city, town or agency shall henceforth enforce by inspection within its service area outside its corporate limits the same standards of construction and of materials, devices, appliances and equipment as is enforced by the department of labor and industries under the authority of this chapter: *Provided further*, That fees charged henceforth in connection with such enforcement shall not exceed

those established in RCW 19.28.210. [1967 ex.s. c 97 § 1; 1963 c 207 § 4; 1959 c 325 § 3.]

**Effective date—**1963 c 207: RCW 19.28.910.

**19.28.370 Chapter inapplicable to telegraph or telephone companies exercising certain functions.** The provisions of chapter 19.28 RCW shall not apply to the work of installing, maintaining or repairing any and all electrical wires, apparatus, installations or equipment used or to be used by a telegraph company or a telephone company in the exercise of its functions and located outdoors or in a building or buildings used exclusively for that purpose. [1959 c 325 § 4.]

**19.28.380 Chapter inapplicable within rights of way of state highways if equal or better standards enforced.** The provisions of this chapter shall not apply within the rights of way of state highways, provided the Washington state highway commission maintains and enforces an equal, higher or better standard of construction and of materials, devices, appliances and equipment than is required by this chapter. [1965 ex.s. c 170 § 35.]

**19.28.900 Severability—**1935 c 169. If any section or part of this chapter shall be held and adjudged to be void or unconstitutional such adjudication shall not affect any other section or part of this chapter not adjudged to be void or unconstitutional. [1935 c 169 § 17.]

**19.28.910 Effective date—**1963 c 207. This act shall take effect on July 1, 1963. [1963 c 207 § 6.]

## Chapter 19.29 ELECTRICAL CONSTRUCTION

### Sections

19.29.010	Rules for use of electrical apparatus or construction.
19.29.020	Copy of chapter to be posted.
19.29.030	Time for compliance.
19.29.040	Enforcement by director of labor and industries— Change of rules—Violation.
19.29.050	Violation of rules by public service company or political subdivision—Penalty.
19.29.060	Violation of rules by agent, employee or officer— Penalty.

*Electricians, licensing, etc.: Chapter 18.37 RCW.*

**19.29.010 Rules for use of electrical apparatus or construction.** It shall be unlawful from and after the passage of this chapter for any officer, agent, or employee of the state of Washington, or of any county, city or other political subdivision thereof, or for any other person, firm or corporation, or its officers, agents or employees, to run, place, erect, maintain, or use any electrical apparatus or construction, except as provided in the rules of this chapter.

Rule 1. No wire or cable carrying a current of less than seven hundred fifty volts of electricity within the corporate limits of any city or town shall be run, placed, erected, maintained or used on any insulator the center of which is less than thirteen inches from the center line of any pole. And no such wire shall be run past any pole to which it is not attached at a distance of less than

thirteen inches from the center line thereof. This rule shall not apply to any wire or cable where the same is run from under ground and placed vertically on the pole; nor to any wire or cable where the same is attached to the top of the pole; nor to a pole top fixture as between it and the same pole; nor to any wire or cable between the points where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure and the point of attachment to such building or structure; nor to any jumper wire or cable carrying a current or connected with a transformer or other appliance on the same pole; nor to bridle or jumper wires on any pole which are attached to or connected with signal wires on the same pole; nor to any aerial cable as between such cable and any pole upon which it originates or terminates; nor to exclusive telephone or telegraph toll lines; nor to aerial cables containing telephone, telegraph, or signal wires, or wires continuing from same, where the cable is attached to poles on which no wires or cables other than the wires continuing from said cable are maintained, provided, that electric light or power wires or cables are in no case maintained on the same side of the street or highway on which said aerial cable is placed.

Rule 2. No wire or cable used to carry a current of over seven hundred fifty volts of electricity within the incorporate limits of any city or town shall be run, placed, erected, maintained or used on any insulator the center of which is nearer than twenty-four inches to the center line of any pole. And no such wire or cable shall be run past any pole to which it is not attached at a distance of less than twenty-four inches from the center line thereof: *Provided*, That this shall not apply to any wire or cable where the same is run from under ground and placed vertically on the pole; nor to any wire or cable where the same is attached to the top of the pole; nor to a pole top fixture, as between it and the same pole; nor to any wire or cable between the points where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure, and the point of attachment to said building or structure; nor to any jumper wire or cable carrying a current or connected with transformers or other appliances on the same pole: *Provided further*, That where said wire or cable is run vertically, it shall be rigidly supported and where possible run on the ends of the cross-arms.

Rule 3. No wire or cable carrying a current of more than seven hundred fifty volts, and less than seventy-five hundred volts of electricity, shall be run, placed, erected, maintained or used within three feet of any wire or cable carrying a current of seven hundred fifty volts or less of electricity; and no wire or cable carrying a current of more than seventy-five hundred volts of electricity shall be run, placed, erected, maintained, or used within seven feet of any wire or cable carrying less than seventy-five hundred volts: *Provided*, That the foregoing provisions of this paragraph shall not apply to any wire or cable within buildings or other structures; nor where the same are run from under ground and placed vertically upon the pole; nor to any service wire or cable where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure, and the

point of attachment to said building or structure; nor to any jumper wire or cable carrying a current or connected with a transformer or other appliance on the same pole: *Provided*, That where run vertically, wires or cables shall be rigidly supported, and where possible run on the ends of the cross-arms: *Provided further*, That as between any two wires or cables mentioned in Rules 1, 2 and 3 of this section, only the wires or cables last in point of time so run, placed, erected or maintained, shall be held to be in violation of the provisions thereof.

Rule 4. No wire or cable used for telephone, telegraph, district messenger, or call bell circuit, fire or burglar alarm, or any other similar system, shall be run, placed, erected, maintained or used on any pole at a distance of less than three feet from any wire or cable carrying a current of over three hundred volts of electricity; and in all cases (except those mentioned in exceptions to Rules 1, 2 and 3) where such wires or cables are run, above or below, or cross over or under electric light or power wires, or a trolley wire, a suitable method of construction, or insulation or protection to prevent contact shall be maintained as between such wire or cable and such electric light, power or trolley wire; and said methods of construction, insulation or protection shall be installed by, or at the expense of the person owning the wire last placed in point of time: *Provided*, That telephone, telegraph or signal wires or cables operated for private use and not furnishing service to the public, may be placed less than three feet from any line carrying a voltage of less than seven hundred and fifty volts.

Rule 5. Transformers, either single or in bank, that exceed a total capacity of over ten K.W. shall be supported by a double cross-arm, or some fixture equally as strong. No transformer shall be placed, erected, maintained or used on any cross-arm or other appliance on a pole upon which is placed a series electric arc lamp or arc light: *Provided*, This shall not apply to a span wire supporting a lamp only. All aerial and underground transformers used for low potential distribution shall be subjected to an insulation test in accordance with the standardized rules of the American Institute of Electrical Engineers. In addition to this each transformer shall be tested at rated line voltage prior to each installation and shall have attached to it a tag showing the date on which the test was made, and the name of the person making the test.

Rule 6. No wire or cable carrying more than seventy-five hundred volts of electricity shall be run, placed, erected, maintained or used on curves or corners of greater than fifteen degrees without maintaining guards sufficient to hold said wire or cable in case of breakage of pins or insulators to which the same are attached, except where said wire or cable terminates or dead-ends on curves or corners.

No wire or cable, other than ground wires, used to conduct or carry electricity, shall be placed, run, erected, maintained or used vertically on any pole without causing such wire or cable to be at all times sufficiently insulated the full length thereof to insure the protection of anyone coming in contact with said wire or cable.

Rule 7. The neutral point or wire of all transformer secondaries strung or erected for use in low potential

distributing systems shall be grounded in all cases where the normal maximum difference of potential between the ground and any point in the secondary circuit will not exceed one hundred and fifty volts. When no neutral point or wire is accessible one side of the secondary circuit shall be grounded in the case of single phase transformers, and any one common point in the case of interconnected polyphase bank or banks of transformers. Where the maximum difference of potential between the ground and any point in the secondary circuit will, when grounded, exceed one hundred fifty volts, grounding shall be permitted. Such grounding shall be done in the manner provided in Rule 33.

Rule 8. In all cases where a wire or cable larger than No. 14 B.W.G. originates or terminates on insulators attached to any pin or other appliance, said wire or cable shall be attached to at least two insulators: *Provided however*, That this section shall not apply to service wires to buildings; nor to wires run vertically on a pole; nor to wires originating or terminating on strain insulators or circuit breakers; nor to telephone, telegraph or signal wires outside the limits of any incorporated city or town.

Rule 9. All poles along which shall be run vertically any wire or cable used to conduct or carry a current of over two hundred fifty volts shall be provided with steps, and no steps shall be placed on any pole nearer the ground than seven feet.

Rule 10. Fixtures placed or erected for the support of wires on the roofs of buildings shall be of sufficient strength to withstand all strains to which they may be subjected, due to the breaking of all wires on one side thereof, and except where insulated wires or cables are held close to fire walls by straps or rings, shall be of such height and so placed that all of the wires supported by such fixtures shall be at least seven feet above any point of roofs less than one-quarter pitch over which they pass or may be attached, and no roof fixtures or wire shall be so placed that they will interfere with the free passage of persons upon, over, to or from the roofs.

Rule 11. No guy wire or cable shall be placed, run, erected, maintained or used within the incorporate limits of any city or town on any pole or appliance to which is attached any wire or cable used to conduct electricity without causing said guy wire or cable to be efficiently insulated with circuit breakers at all times at a distance of not less than eight feet nor more than ten feet measured along the line of said guy wire or cable from each end thereof: *Provided*, No circuit breaker shall be required at the lower end of the guy wire or cable where the same is attached to a ground anchor, nor shall any circuit breaker be required where said guy wire or cable runs direct from a grounded messenger wire to a grounded anchor rod.

Rule 12. In all span wires used for the purpose of supporting trolley wires or series arc lamps there shall be at least two circuit breakers, one of which shall at all times be maintained no less than four feet nor more than six feet distant from the trolley wire or series arc lamp, and in cases where the same is supported by a building or metallic pole, the other circuit breaker shall be maintained at the building or at the pole: *Provided*, That in

span wires which support two or more trolley wires no circuit breaker shall be required in the span wire between any two of the trolley wires: *Provided further*, That in span wires supporting trolley wires attached to wooden poles only the circuit breaker adjacent to the trolley wire shall be required.

Rule 13. At all points where in case of a breakdown of trolley span wires, the trolley wire would be liable to drop within seven feet of the ground, there shall be double span wires and hangers placed at such points.

Rule 14. All energized wires or appliances installed inside of any building or vault, for the distribution of electrical energy, shall be sufficiently insulated, or so guarded, located, or arranged as to protect any person from injury.

Rule 15. The secondary circuit of current transformers, the casings of all potential regulators and arc light transformers, all metal frames of all switch boards, metal oil tanks used on oil switches except where the tank is part of the conducting system, all motor and generator frames, the entire frame of the crane and the tracks of all traveling cranes and hoisting devices, shall be thoroughly grounded, as provided in Rule 33.

Rule 16. All generators and motors having a potential of more than three hundred volts shall be provided with a suitable insulated platform or mat so arranged as to permit the attendant to stand upon such platform or mat when working upon the live parts of such generators or motors.

Rule 17. Suitable insulated platforms or mats shall be provided for the use of all men while working on any live part of switchboards on which any wire or appliance carries a potential in excess of three hundred volts.

Rule 18. Every generator, motor, transformer, switch or other similar piece of apparatus and device used in the generation, transmission or distribution of electrical energy in stations or substations, shall be either provided with a name plate giving the capacity in volts and amperes, or have this information stamped thereon in such a manner as to be clearly legible.

Rule 19. In all cases there shall be two switches used at the station or substation in each feeder for the transmission of electrical energy at constant potential of seven hundred fifty volts or over; one shall be an oil switch so situated as to insure the safety of the person operating the same; the other shall be a disconnecting switch: *Provided*, That oil switches shall not be required in direct current feeders.

Rule 20. When lines of seven hundred fifty volts or over are cut out at the station or substation to allow employees to work upon them, they shall be short-circuited and grounded at the station, and shall in addition, if the line wires are bare, be short-circuited, and where possible grounded at the place where the work is being done.

Rule 21. All switches installed with overload protection devices, and all automatic overload circuit breakers must have the trip coils so adjusted as to afford complete protection against overloads and short circuits, and the same must be so arranged that no pole can be opened manually without opening all the poles, and the trip coils shall be instantly operative upon closing.

Rule 22. All feeders for electric railways must, before leaving the plant or substation, be protected by an approved circuit breaker which will cut off the circuit in case of an accidental ground or short circuit.

Rule 23. There shall be provided in all distributing stations a ground detecting device.

Rule 24. There shall be provided in all stations, plants, and buildings herein specified warning cards printed on red cardboard not less than two and one-quarter by four and one-half inches in size, which shall be attached to all switches opened for the purpose of linemen or other employees working on the wires. The person opening any line switch shall enter upon said card the name of the person ordering the switch opened, the time opened, the time line was reported clear and by whom, and shall sign his own name.

Rule 25. No manhole containing any wire carrying a current of over three hundred volts shall be less than six feet from floor to inside of roof; if circular in shape it shall not be less than six feet in diameter; if square it shall be six feet from wall to wall: *Provided however*, That this paragraph shall not apply to any manhole in which it shall not be required that any person enter to perform work: *Provided further*, That the foregoing provisions of this paragraph shall not apply where satisfactory proof shall be submitted to the proper authorities that it is impracticable or physically impossible to comply with this law within the space or location designated by the proper authorities.

Rule 26. All manholes containing any wires or appliances carrying electrical current shall be kept in a sanitary condition, free from stagnant water or seepage or other drainage which is offensive or dangerous to health, either by sewer connection or otherwise, while any person is working in the same.

Rule 27. No manhole shall have an opening to the outer air of less than twenty-six inches in diameter, and the cover of same shall be provided with vent hole or holes equivalent to three square inches in area.

Rule 28. No manhole shall have an opening which is, at the surface of the ground, within a distance of three feet at any point from any rail of any railway or street car track: *Provided*, That this shall not apply where satisfactory proof shall be submitted to the proper authorities that it is impracticable or physically impossible to comply with the provisions of this paragraph: *Provided*, That in complying with the provisions of this rule only the construction last in point of time performed, placed or erected shall be held to be in violation thereof.

Rule 29. Whenever persons are working in any manhole whose opening to the outer air is less than three feet from the rail of any railway or street car track, a watchman or attendant shall be stationed on the surface at the entrance of such manhole at all times while work is being performed therein.

Rule 30. There shall be provided proper cutout switches on all primary and secondary wires in all manholes where the wires are connected with transformers or other electrical devices therein.

Rule 31. All persons employed in manholes shall be furnished with insulated platforms so as to protect the workmen while at work in the manholes: *Provided*, That

this paragraph shall not apply to manholes containing only telephone, telegraph or signal wires or cables.

Rule 32. No work shall be permitted to be done on any live wire, cable or appliance carrying more than seven hundred fifty volts of electricity by less than two competent and experienced persons, who, at all times while performing such work shall be in the same room, chamber, manhole or other place in which, or on the same pole on which, such work is being done: *Provided*, That in districts where only one competent and experienced person is regularly employed, and a second competent and experienced person cannot be obtained without delay at prevailing rate of pay in said district, such work shall be permitted to be done by one competent and experienced person and a helper who need not be on the same pole on which said work is being done.

No work shall be permitted to be done in any manhole or subway on any live wire, cable or appliance carrying more than three hundred volts of electricity by less than two competent and experienced persons, who at all times while performing such work shall be in the same manhole or subway in which such work is being done.

Rule 33. The grounding provided for in these rules shall be done in the following manner: By connecting a wire or wires not less than No. 6 B.&S. gauge to a water pipe of a metallic system outside of the meter, if there is one, or to a copper plate one-sixteenth inch thick and not less than three feet by six feet area buried in coke below the permanent moisture level, or to other device equally as efficient. The ground wire or wires of a direct current system of three or more wires shall not be smaller than the neutral wire at the central station, and not smaller than a No. 6 B.&S. gauge elsewhere: *Provided*, That the maximum cross section area of any ground wire or wires at the central station need not exceed one million circular mils. The ground wires shall be carried in as nearly a straight line as possible, and kinks, coils and short bends shall be avoided: *Provided*, That the provisions of this rule shall not apply as to size to ground wires run from instrument transformers or meters. [1965 ex.s. c 65 § 1; 1913 c 130 § 1; RRS § 5435.] [1954 SLC-RO 29.]

**19.29.020 Copy of chapter to be posted.** A copy of this chapter printed in a legible manner shall be kept posted in a conspicuous place in all electric plants, stations and storerooms. [1913 c 130 § 2; RRS § 5436.] [1954 SLC-RO-29.]

**19.29.030 Time for compliance.** All wires, cables, poles, electric fixtures and appliances of every kind being used or operated at the time of the passage of this chapter, shall be changed, and made to conform to the provisions of this chapter, on or before the 1st day of July, 1940: *Provided however*, That the director of labor and industries of Washington shall have power, upon reasonable notice, to order and require the erection of all guards, protective devices, and methods of protection which in the judgment of the director are necessary and should be constructed previous to the expiration of the time fixed in this section: *Provided further*, That nothing

in this chapter shall apply to manholes already constructed, except the provisions for guards, sanitary conditions, drainage and safety appliances specified in rules 20, 24, 26, 29, 30, 31 and 32. [1937 c 105 § 1; 1931 c 24 § 1; 1921 c 20 § 1; 1917 c 41 § 1; 1913 c 130 § 3; RRS § 5437.] [1954 SLC-RO-29.]

**19.29.040 Enforcement by director of labor and industries—Change of rules—Violation.** It shall be the duty of the public service commission [director of labor and industries] of Washington to enforce all the provisions and rules of this chapter and it [he] is hereby empowered upon hearing to amend, alter and change any and all rules herein contained, or any part thereof, and to supplement the same by additional rules and requirements, after first giving reasonable public notice and a reasonable opportunity to be heard to all affected thereby: *Provided*, That no rule amending, altering or changing any rule supplementary to the rules herein contained shall provide a less measure of safety than that provided by the rule amended, altered or changed.

A violation of any rule herein contained or of any rule or requirement made by the commission [director of labor and industries] which it is hereby permitted to make shall be deemed a violation of this chapter. [1913 c 130 § 4; RRS § 5438.] [1954 SLC-RO-29.]

**Reviser's note:** (1) Duties of the public service commission devolved on director of labor and industries. 1921 c 7 § 80 subdivision (5) relating to powers and duties of the director of labor and industries reads: "(5) To exercise all the powers and perform all the duties in relation to the enforcement, amendment, alteration, change, and making additions to rules and regulations concerning the operation, placing, erection, maintenance, and use of electrical apparatus, and the construction thereof, now vested in, and required to be performed by, the public service commission;". See also RCW 43.22.050(3).

(2) Name of "public service commission" changed to "utilities and transportation commission" by 1961 c 290 § 1.

**19.29.050 Violation of rules by public service company or political subdivision—Penalty.** Every public service company, county, city, or other political subdivision of the state of Washington, and all officers, agents and employees of any public service company, county, city, or other political subdivision of the state of Washington, shall obey, observe and comply with every order, rule, direction or requirement made by the commission [director of labor and industries] under authority of this chapter, so long as the same shall be and remain in force. Any public service company, county, city, or other political subdivision of the state of Washington, which shall violate or fail to comply with any provision of this chapter, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission [director of labor and industries], pursuant to this chapter, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction or requirement of this chapter shall be a separate and distinct offense, and in case of a continued violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense. [1913 c 130 § 5; RRS § 5439.] [1954 SLC-RO-29.]

**Reviser's note:** See note following RCW 19.29.040.

**19.29.060 Violation of rules by agent, employee or officer—Penalty.** Every officer, agent or employee of any public service company, the state of Washington, or any county, city, or other political subdivision of the state of Washington, who shall violate or fail to comply with, or who procures, aids or abets any violation by any public service company, the state of Washington, or any county, city or other political subdivision of the state of Washington, of any provision of this chapter, or who shall fail to obey, observe or comply with any order of the commission [director of labor and industries], pursuant to this chapter, or any provision of any order of the commission [director of labor and industries], or who procures, aids or abets any such public service company, the state of Washington, or any county, city, or other political subdivision of the state of Washington, in its failure to obey, observe and comply with any such order or provision, shall be guilty of a gross misdemeanor. [1913 c 130 § 6; RRS § 5440.] [1954 SLC-RO-29.]

**Reviser's note:** See note following RCW 19.29.040.

## Chapter 19.30 FARM LABOR CONTRACTORS

### Sections

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19.30.900	Severability—1955 c 392.

**19.30.010 Definitions.** As used in this chapter:

(1) "Person" includes any individual, firm, partnership, association or corporation.

(2) "Farm labor contractor" means any person, or his agent, who, for a fee, employs workers to render personal services in connection with the production of any farm products, to, for, or under the direction of an employer engaged in the growing, producing or harvesting of farm products, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing, producing or harvesting of farm products or who provides in connection with recruiting, soliciting, supplying or hiring workers engaged in the growing, producing or harvesting of farm products, one or more of the following services: Furnishes board, lodging or transportation for such workers; supervises, times, checks, counts, sizes, or otherwise directs or measures their work; or disburses wage payments to such persons.

This chapter shall not apply to employees of the employment security department acting in their official capacity or their agents, nor to any person who performs any of the above services only within the scope of his regular employment for the employer engaged in the growing, producing or harvesting of farm products on whose behalf he is so acting, unless he is receiving a commission or fee, which commission or fee is determined by the number of workers recruited, or to a non-profit corporation or organization which performs the same functions for its members: *Provided, however,* That said nonprofit corporation or organization shall be one in which:

(a) None of its directors, officers, or employees are deriving any profit beyond a reasonable salary for services performed in its behalf.

(b) Membership dues and fees are used solely for the maintenance of the association or corporation.

(3) "Fee" means:

(a) Any money or other valuable consideration paid or promised to be paid for services rendered or to be rendered by a farm labor contractor.

(b) Any valuable consideration received or to be received by a farm labor contractor for or in connection with any of the services described above, and shall include the difference between any amount received or to be received by him, and the amount paid out by him for or in connection with the rendering of such services.

(4) "Director" as used in this chapter means the director of the department of labor and industries of the state of Washington. [1955 c 392 § 1.]

**19.30.020 License required—Duplicates.** No person shall act as a farm labor contractor until a license to do so has been issued to him by the director, and unless such license is in full force and effect and is in his possession. The director shall, by regulation, provide a means of issuing duplicate licenses in case of loss of the original license or any other appropriate instances. [1955 c 392 § 2.]

**19.30.030 Applicants—Qualifications—Fee—Liability insurance.** The director shall not issue to any person a license to act as a farm labor contractor until:

(1) Such person has executed a written application therefor on a form prescribed by the director, subscribed and sworn to by the applicant, and containing (a) a statement by the applicant of all facts required by the director concerning the applicant's character, competency, responsibility, and the manner and method by which he proposes to conduct his operations as a farm labor contractor if such license is issued, and (b) the names and addresses of all persons financially interested, either as partners, stockholders, associates or profit sharers, in the proposed operation as a labor contractor, together with the amount of their respective interests;

(2) The director, after investigation, is satisfied as to the character, competency, and responsibility of the applicant;

(3) The applicant has paid to the director a license fee of ten dollars, which shall accompany the license application and which shall be refunded to the applicant in the event a license is denied;

(4) The applicant has filed proof satisfactory to the director of the existence of a policy of insurance with any insurance carrier authorized to do business in the state of Washington in an amount satisfactory to the director, which insures said licensee against liability for damage to persons or property arising out of the licensee's operation of, or ownership of, any vehicle or vehicles for the transportation of individuals in connection with his business, activities, or operations as a farm labor contractor. [1955 c 392 § 3.]

**19.30.040 Surety bond.** The director may require the deposit of a surety bond by any person seeking a license under this chapter to insure compliance with the provisions of this chapter. Such bond shall be in an amount specified by the director and shall be payable to the state of Washington and shall be conditioned that the applicant will comply with this chapter and will pay all sums legally owing to any person when the farm labor contractor or his agents have received such sums and will pay all damages occasioned to any person by failure so to do, or by any violation of the provisions of this chapter, or false statements or misrepresentations made in the procurement of his license. The aggregate liability of the surety upon such bond for all claims which may arise thereunder shall not exceed the face amount of the bond. [1955 c 392 § 4.]

**19.30.050 License—Grounds for denying.** A license to operate as a farm labor contractor shall be denied:

(1) To any person who sells or proposes to sell intoxicating liquors in a building or on premises where he operates or proposes to operate as a farm labor contractor, or

(2) To a person whose license has been revoked within three years from the date of application. [1955 c 392 § 5.]

**19.30.060 License—Revocation, suspension, refusal to renew.** The director may revoke, suspend, or refuse to renew any license when it is shown that:

(1) The licensee or any agent of the licensee has violated or failed to comply with any of the provisions of this chapter;

(2) The licensee has made any misrepresentations or false statements in his application for a license;

(3) The conditions under which the license was issued have changed or no longer exist;

(4) The licensee, or any agent of the licensee, has violated or wilfully aided or abetted any person in the violation of, or failed to comply with, any law of the state of Washington regulating employment in agriculture, the payment of wages to farm employees, or the conditions, terms, or places of employment affecting the health and safety of farm employees, which is applicable to the business activities, or operations of the licensee in his capacity as a farm labor contractor; or

(5) The licensee or any agent of licensee has in recruiting farm labor solicited or induced the violation of any then existing contract of employment of such laborers. [1955 c 392 § 6.]

**19.30.070 License—Contents.** Each license shall contain, on the face thereof:

(1) The name and address of the licensee and the fact that he is licensed to act as a farm labor contractor for the period upon the face of the license only;

(2) The number, date of issuance, and date of expiration of the license;

(3) The amount of the surety bond deposited by the licensee; and

(4) The fact that the license may not be transferred or assigned. [1955 c 392 § 7.]

**19.30.080 License—Duration—Renewal—Cancellation of bond.** Each license shall run to and include the thirty-first day of December next following the date thereof unless sooner revoked by the director. A license may be renewed each year upon the filing of an application for a renewed bond and the payment of the annual license fee, but the director may demand that a new application and a new bond be submitted. Where the surety intends to cancel a bond, notice of such cancellation shall be furnished by the surety to the director thirty days prior to the effective date of such cancellation. [1955 c 392 § 8.]

**19.30.090 License—Application for renewal.** All applications for renewal shall state the names and addresses of all persons financially interested either as partners, associates or profit sharers in the operation as a farm labor contractor. [1955 c 392 § 9.]

**19.30.100 Licensee—Service of summons when departed from state.** (1) When a licensee has departed from the state with intent to defraud creditors or to avoid service of summons in any action brought under this chapter, service shall be made upon the licensee as prescribed in RCW 4.28.100 and 4.28.110.

(2) When a licensee has deposited a bond with the director and has failed to comply with the conditions of said bond as provided by RCW 19.30.040, and when said licensee has departed from this state, service may be made upon the surety as prescribed by RCW 4.28.090. [1955 c 392 § 10.]

**19.30.110 Licensee—Duties.** Every licensee must:

(1) Carry his license with him at all times and exhibit the same to all persons with whom he intends to deal in his capacity as a farm labor contractor prior to so dealing.

(2) File at the United States post office serving the address of the licensee, as noted on the face of his license, a correct change of address immediately upon each occasion said licensee permanently moves his address.

(3) Promptly when due, pay or distribute to the individuals entitled thereto all moneys or other things of

value entrusted to the licensee by any third person for such purpose.

(4) Comply on his part with the terms and provisions of all legal and valid agreements and contracts entered into between licensee in his capacity as a farm labor contractor and third persons.

(5) File information regarding his work offer with the nearest employment service office, such information to include wages and work to be performed and any other information prescribed by the director. [1955 c 392 § 11.]

**19.30.120 Licensee—Prohibited acts.** No licensee shall:

(1) Make any misrepresentation or false statement in his application for a license.

(2) Make or cause to be made, to any person, any false, fraudulent, or misleading representation, or publish or circulate or cause to be published or circulated any false, fraudulent, or misleading information concerning the terms or conditions or existence of employment at any place or places, or by any person or persons, or of any individual or individuals.

(3) Send or transport any worker to any place where the farm labor contractor knows a strike or lockout exists.

(4) Do any act in his capacity as a farm labor contractor, or cause any act to be done, which constitutes a crime involving moral turpitude under any law of the state of Washington. [1955 c 392 § 12.]

**19.30.130 Rules and regulations.** The director may promulgate rules and regulations not inconsistent with this chapter for the purpose of enforcing and administering this chapter. [1955 c 392 § 14.]

**19.30.140 Permanent revolving fund—Deposits—Remittance of justice court fines, fees, penalties and forfeitures.** A permanent revolving fund, in which shall be deposited all moneys collected for licenses and all fines collected for violations of the provisions of this chapter, shall be established. Expenses incurred under this chapter, not to exceed receipts, shall be paid from this fund: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1969 ex.s. c 199 § 20; 1955 c 392 § 15.]

**19.30.150 Penalties.** Any person who violates any provisions of this chapter, or who causes or induces another to violate any provisions of this chapter, shall be guilty of a misdemeanor punishable by a fine of not more than five thousand dollars, or imprisonment in the county jail for not more than six months, or both. [1955 c 392 § 13.]

**19.30.900 Severability—1955 c 392.** If any section, sentence, clause or word of this chapter shall be held unconstitutional, the invalidity of such section, sentence, clause or word shall not affect the validity of any other portion of this chapter, it being the intent of this



legislative assembly to enact the remainder of this chapter notwithstanding such part so declared unconstitutional should or may be so declared. [1955 c 392 § 17.]

### Chapter 19.31 EMPLOYMENT AGENCIES

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19.31.900	Severability—1969 ex.s. c 228.
19.31.910	Effective date—1969 ex.s. c 228.

**19.31.010 Short title.** This chapter shall be known and cited as "The Employment Agency Act". [1969 ex.s. c 228 § 1.]

**19.31.020 Definitions.** Unless a different meaning is clearly required by the context, the following words and phrases, as hereinafter used in this chapter, shall have the following meanings:

(1) "Employment agency" is synonymous with "agency" and shall mean any business in which any part of the business's gross or net income is derived from a fee received from applicants, and in which any of the following activities are engaged in:

(a) The offering, promising, procuring or attempting to procure employment for applicants; or

(b) The giving of information regarding where and from whom employment may be obtained.

In addition the term "employment agency" shall mean and include any person, bureau, organization or school which for profit, by advertisement or otherwise, offers, as one of its main objects or purposes, to procure employment for any person who pays for its services, or which collects tuition, or charges for service of any nature, where the main object of the person paying the same is to secure employment. The term "employment agency" shall not include labor union organizations, temporary

service contractors proprietary schools or the Washington state employment agency.

(2) "Temporary service contractors" shall mean any person, firm, association, or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part time or temporary help basis to others.

(3) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(4) "Applicant", except when used to describe an applicant for an employment agency license, means any person, whether employed or unemployed, seeking or entering into any arrangement for his employment or change of his employment through the medium or service of an employment agency.

(5) "Person" includes an individual, a firm, a corporation, partnership or association.

(6) "Director" shall mean the director of the department of motor vehicles. [1969 ex.s. c 228 § 2.]

**19.31.030 Records.** Each employment agency shall keep records of all services rendered employers and applicants. These records shall contain the name and address of the employer by whom the services were solicited; the name and address of the applicant; kind of position ordered by the employer; kind of position accepted by the applicant; probable duration of the employment, if known; rate of wage or salary to be paid the applicant; amount of the employment agency's fee; dates and amounts of refund if any, and reason for such refund; and the contract agreed to between the agency and applicant.

The director shall have authority to demand and to examine, at the employment agency's regular place of business, all books, documents, and records in its possession for inspection. Unless otherwise provided by rules or regulation adopted by the director, such records shall be maintained for a period of three years from the date in which they are made. [1969 ex.s. c 228 § 3.]

**19.31.040 Contract between agency and applicant—Contents—Notice.** An employment agency shall provide each applicant with a copy of the contract between the applicant and employment agency. Such contract shall contain the following:

(1) The name, address, and telephone number of the employment agency;

(2) Trade name if any;

(3) The date of the contract;

(4) The name of the applicant;

(5) The amount of the fee to be charged the applicant, or the method of computation of the fee, and the time and method of payments: *Provided, however,* That if any service charge is to be charged, the contract shall conform to the requirements of chapter 63.14 RCW, as now or hereafter amended;

(6) A notice in eight-point bold face type or larger directly above the space reserved in the contract for the signature of the buyer. The caption, "NOTICE TO APPLICANT—READ BEFORE SIGNING" shall

precede the body of the notice and shall be in ten-point bold face type or larger. The notice shall read as follows:

"This is a contract. If you accept employment with any employer through [name of employment agency] you will be liable for the payment of the fee as set out above. Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank. You are entitled to a copy of this contract at the time you sign it." [1969 ex.s. c 228 § 4.]

**19.31.050 Approval of contract, fee schedule.** Prior to using any contract or fee schedule in the transaction of its business with applicants, each employment agency shall obtain the director's approval for the use of such contract or fee schedule. [1969 ex.s. c 228 § 5.]

**19.31.060 Request from employer for interview required.** No employment agency shall send any applicant on an interview with a prospective employer without having first obtained, either orally or in writing, a bona fide request from such employer for the interview. [1969 ex.s. c 228 § 6.]

**19.31.070 Administration of chapter—Rules—Subpoenas—Investigations—Inspections.** (1) The director shall administer the provisions of this chapter and shall issue from time to time reasonable rules and regulations for enforcing and carrying out the provisions and purposes of this chapter.

(2) The director shall have power to compel the attendance of witnesses by the issuance of subpoenas, to administer oaths, and to take testimony and proofs concerning all matters pertaining to the administration of this chapter.

(3) The director shall have supervisory and investigative authority over all employment agencies. Upon receiving a complaint against any employment agency, the director shall have the right to examine all books, documents, or records in its possession. In addition, the director may examine the office or offices where business is or shall be conducted by such agency. [1969 ex.s. c 228 § 7.]

**19.31.080 License required—Penalty.** It shall be a misdemeanor for any person to conduct an employment agency business in this state unless he has an employment agency license issued pursuant to the provisions of this chapter. [1969 ex.s. c 228 § 8.]

**19.31.090 Bond—Cash deposit.** Before conducting any business as an employment agency each licensee shall file with the director a surety bond in the sum of two thousand dollars running to the state of Washington, for the benefit of any person injured or damaged as a result of any violation by the licensee or his agent of any of the provisions of this chapter or of any rule or regulation adopted by the director pursuant to RCW 19.31.070(1).

In lieu of the surety bond required by this section the license applicant may file with the director a cash deposit or other negotiable security acceptable to the director: *Provided, however,* If the license applicant has

filed a cash deposit, the director shall deposit such funds in a special trust savings account in a commercial bank, mutual savings bank, or savings and loan association and shall pay annually to the depositor the interest derived from such account. [1969 ex.s. c 228 § 9.]

**19.31.100 Applications—Contents—Filing.** (1) Every applicant for an employment agency's license or a renewal thereof shall file with the director a written application stating the name and address of the applicant; the street and number of the building in which the business of the employment agency is to be conducted; the name of the person who is to have the general management of the office; the name under which the business of the office is to be carried on; whether or not the applicant is pecuniarily interested in the business to be carried on under the license; shall be signed by the applicant and sworn to before a notary public; and shall identify anyone holding over twenty percent interest in the agency. If the applicant is a corporation, the application shall state the names and addresses of the officers and directors of the corporation, and shall be signed and sworn to by the president and secretary thereof. If the applicant is a partnership, the application shall also state the names and addresses of all partners therein, and shall be signed and sworn to by all of them. The application shall also state whether or not the applicant is, at the time of making the application, or has at any previous time been engaged in or interested in or employed by anyone engaged in the business of an employment agency.

(2) All applications for employment agency licenses shall be accompanied by a copy of the form of contract and fee schedule to be used between the employment agency and the applicant. [1969 ex.s. c 228 § 10.]

**19.31.110 Expiration date of licenses.** An employment agency license shall expire June 30th. [1969 ex.s. c 228 § 11.]

**19.31.120 Transfer of licenses.** No license granted pursuant to this chapter shall be transferable without the consent of the director. No employment agency shall permit any person not mentioned in the license application to become connected with the business as an owner, member, officer, or director without the consent of the director. Consent may be withheld for any reason for which an original application for a license might have been rejected, if the person in question had been mentioned therein. [1969 ex.s. c 228 § 12.]

**19.31.130 Denial, suspension or revocation of licenses—Grounds.** In accordance with the provisions of chapter 34.04 RCW as now or as hereafter amended, the director may by order deny, suspend or revoke the license of any employment agency if he finds that the applicant or licensee:

(1) Was previously the holder of a license issued under this chapter, which was revoked for cause and never reissued by the director, or which license was suspended for cause and the terms of the suspension have not been fulfilled;

(2) Has been found guilty of any felony within the past five years involving moral turpitude, or for any misdemeanor concerning fraud or conversion, or suffering any judgment in any civil action involving wilful fraud, misrepresentation or conversion;

(3) Has made a false statement of a material fact in his application or in any data attached thereto;

(4) Has violated any provisions of this chapter, or failed to comply with any rule or regulation issued by the director pursuant to this chapter. [1969 ex.s. c 228 § 13.]

**19.31.140 Fees for licensees.** The director shall determine the fees, as provided in RCW 43.24.085 as now or hereafter amended, charged to those parties licensed as employment agencies for original applications, renewal per year, branch license, both original and renewal, transfer of license, and approval of amended or new contracts and/or fee schedules. [1975 1st ex.s. c 30 § 92; 1969 ex.s. c 228 § 14.]

**19.31.150 Employment condition precedent to charging fee.** No employment agency shall charge or accept a fee or other consideration from an applicant without complying with the terms of a written contract as specified in RCW 19.31.040, and then only after such agency has been responsible for referring such job applicant to an employer or such employer to a job applicant and where as a result thereof such job applicant has been employed by such employer. [1969 ex.s. c 228 § 15.]

**19.31.160 Charging fee or payment contrary to chapter—Return of excess.** Any employment agency which collects, receives, or retains a fee or other payment contrary to the provisions of this chapter or to the rules and regulations adopted pursuant to this chapter shall return the excessive portion of the fee within seven days after receiving a demand therefor from the director. [1969 ex.s. c 228 § 16.]

**19.31.170 Limitations on fee amounts.** (1) If an applicant accepts employment by agreement with an employer and thereafter never reports for work, the gross fee charged to the applicant shall not exceed: (a) Ten percent of what the first month's salary or wages would be, if known; (b) ten percent of the first month's drawing account. If the employment was to have been on a commission basis without any drawing account, then no fee may be charged in the event that the applicant never reports for work.

(2) If an applicant accepts employment on a commission basis without any drawing account, then the gross fee charged such applicant shall be a percentage of his commissions actually earned.

(3) If an applicant accepts employment and if within ninety days of his reporting for work the employment is terminated without his fault, then the gross fee charged such applicant shall not exceed ten percent of the gross salary, wages or commission received by him. [1969 ex.s. c 228 § 17.]

**19.31.180 Posting of fee limitation and remedy provisions.** Each licensee shall post the following in a conspicuous place in each office in which it conducts business: (1) The substance of RCW 19.31.150 through 19.31.170; and (2) a name and address provided by the director, in a form prescribed by him, of a person to whom complaints concerning possible violation of this chapter may be made. All words required to be posted pursuant to this section shall be printed in ten point bold face type. [1969 ex.s. c 228 § 18.]

**19.31.190 Rules of conduct.** In addition to the other provisions of this chapter the following rules shall govern each and every employment agency:

(1) Every license or a verified copy thereof shall be displayed in a conspicuous place in each office of the employment agency;

(2) No fee shall be solicited or accepted as an application or registration fee by any employment agency solely for the purpose of being registered as an applicant for employment;

(3) No licensee or agent of the licensee shall solicit, persuade, or induce an employee to leave any employment in which the licensee or agent of the licensee has placed the employee; nor shall any licensee or agent of the licensee persuade or induce or solicit any employer to discharge any employee;

(4) No employment agency shall knowingly cause to be printed or published a false or fraudulent notice or advertisement for obtaining work or employment. All advertising by a licensee shall signify that it is an employment agency solicitation;

(5) No licensee shall fail to state in any advertisement, proposal or contract for employment that there is a strike or lockout at the place of proposed employment, if he has knowledge that such condition exists;

(6) No licensee or agent of a licensee shall directly or indirectly split, divide, or share with an employer any fee, charge, or compensation received from any applicant who has obtained employment with such employer or with any other person connected with the business of such employer;

(7) When an applicant is referred to the same position by two licensees, the fee shall be paid to the licensee who first contacted the applicant concerning the specific opening: *Provided*, That he has given the name of the employer to the applicant and has arranged an interview or submitted a resume to the employer within ten days of such contact. [1969 ex.s. c 228 § 19.]

**19.31.200 Employment agency advisory board—Created—Membership—Terms—Removal—Vacancies—Meetings—Officers.** (1) There is hereby created a board to be known as the employment agency advisory board whose duty shall be to advise the director as to the administration of the provisions of this chapter and the issuance of reasonable rules and regulations for enforcing and carrying out the provisions and purposes of this chapter. Such board shall consist of eight members, seven members thereof to be appointed by the governor, five from among those persons owning or managing employment agencies, the sixth member shall

be a representative of employers, the seventh shall be a representative of the majority of workmen employed in the state. The attorney general or his designee shall serve as a nonvoting ex officio member of the board.

(2) Each member of the board shall hold office for four years and until his successor is appointed, except that with respect to the first board two members shall be appointed for four years, two members for three years, three members for two years;

(3) Any member of the board shall be removed by the director for suspension or revocation of any license issued to him under this chapter. Vacancies in the membership of the board shall be filled by appointment by the director for the unexpired term;

(4) The board shall meet at the call of the director and consult with him on the issuance of any proposed rules and regulations for enforcing and carrying out the provisions and purposes of this chapter. The decision of the director, after such consultation, shall be final. The board is also authorized to conduct its own meetings at the call of its chairman;

(5) The board shall elect annually from its members a chairman, vice chairman and secretary;

(6) The board members shall be compensated pursuant to RCW 43.24.060 as now or hereafter amended. [1969 ex.s. c 228 § 20.]

**19.31.210 Enforcement.** The director may refer such evidence as may be available to him concerning violations of this chapter or of any rule or regulation adopted hereunder to the attorney general or the prosecuting attorney of the county wherein the alleged violation arose, who may, in their discretion, with or without such a reference, in addition to any other action they might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this chapter: *Provided*, That this chapter shall be considered in conjunction with chapters 9.04 and 19.86 RCW, as now or hereafter amended, and the powers and duties of the attorney general and the prosecuting attorney as they may appear in the aforementioned chapters, shall apply against all persons subject to this chapter. [1969 ex.s. c 228 § 21.]

**19.31.220 Assurance of discontinuance of violation.** In the enforcement of this chapter, the attorney general and/or any said prosecuting attorney may accept an assurance of discontinuance from any person deemed in violation of any provisions of this chapter. Any such assurance shall be in writing and shall be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston county. [1969 ex.s. c 228 § 22.]

**19.31.230 Civil penalty.** Any person who violates the terms of any court order or temporary or permanent injunction issued pursuant to this chapter, shall forfeit and pay a civil penalty of not more than five thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain continuing jurisdiction

and in such cases the attorney general and/or the prosecuting attorney acting in the name of the state may petition for the recovery of civil penalties. [1969 ex.s. c 228 § 23.]

**19.31.240 Service of process outside state.** Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which conduct has had impact in this state which this chapter reprehends. Such person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185, as now or hereafter amended. [1969 ex.s. c 228 § 24.]

**19.31.250 Chapter provisions exclusive—Authority of political subdivisions not affected.** (1) The provisions of this chapter relating to the regulation of private employment agencies shall be exclusive.

(2) This chapter shall not be construed to affect or reduce the authority of any political subdivision of the state of Washington to provide for the licensing of private employment agencies solely for revenue purposes. [1969 ex.s. c 228 § 25.]

**19.31.260 Administrative procedure act to govern administration.** The administration of this chapter shall be governed by the provisions of the Administrative Procedure Act, chapter 34.04 RCW, as now or hereafter amended. [1969 ex.s. c 228 § 26.]

**19.31.900 Severability—1969 ex.s. c 228.** If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1969 ex.s. c 228 § 27.]

**19.31.910 Effective date—1969 ex.s. c 228.** This act shall become effective July 1, 1969. [1969 ex.s. c 228 § 28.]

**Chapter 19.32  
FOOD LOCKERS**

Sections

19.32.010	Declaration of police power.
19.32.020	Definitions.
19.32.030	Director—Duties.
19.32.040	Licensing required—Application.
19.32.050	License fees—Annual renewal.
19.32.055	Stipulated license fee to replace existent charges.
19.32.060	Revocation or suspension of licenses—Grounds— Notice—Review.
19.32.090	Revocation or suspension of licenses—Witnesses— Evidence.
19.32.100	Equipment—Operation—Controls— Temperatures.
19.32.110	Diseased persons not to be employed—Health certificates.
19.32.150	Inspection of lockers and vehicles.
19.32.160	Liability for loss of goods.
19.32.165	Owners or operators not warehousemen.
19.32.170	Operator's lien—Liability for game law violations.

19.32.180 Violations—Penalty.  
19.32.900 Severability—1943 c 117.

**19.32.010 Declaration of police power.** This chapter is in exercise of the police powers of the state for the protection of the safety, health and welfare of the people of the state. It hereby is found and declared that the public welfare requires control and regulation of the operation of refrigerated lockers and of the sale, handling and processing of articles of human food in connection therewith, and the control, inspection and regulation of persons engaged therein, in order to prevent or eliminate unsanitary, unhealthful, fraudulent, and unfair or uneconomic practices and conditions in connection with the refrigerated locker business, which practices and conditions endanger public health, defraud customers, jeopardize the public source of supply and storage facilities of essential food products, and adversely affect an important and growing industry. It is further found and declared that the regulation of the refrigerated locker business, as above outlined, is in the interest of the economic and social well-being and the health and safety of the state and all of its people. [1943 c 117 § 1; Rem. Supp. 1943 § 6294–125.]

**19.32.020 Definitions.** Except where the context indicates a different meaning, terms used in this chapter shall be defined as follows:

(1) "Refrigerated locker" or "locker" means any place, premises or establishment where facilities for the cold storage and preservation of human food in separate and individual compartments are offered to the public upon a rental or other basis providing compensation to the person offering such services.

(2) "Person" includes any individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaging in the business of operating or owning or offering the services of refrigerated lockers as above defined. [1943 c 117 § 2; Rem. Supp. 1943 § 6294–126.]

**19.32.030 Director—Duties.** The director of agriculture is hereby empowered to prescribe and to enforce such rules and regulations and to make such definitions, and to prescribe such procedure with regard to hearings, as he may deem necessary to carry into effect the full intent and meaning of this chapter. [1943 c 117 § 7; Rem. Supp. 1943 § 6294–131.]

**19.32.040 Licensing required—Application.** No person hereafter shall engage within this state in the business of owning, operating or offering the services of any refrigerated locker or lockers without having obtained from the director of agriculture a license for each such place of business. Application for such license shall be made in writing and under oath to the director of agriculture, on such forms and with such pertinent information as he may deem necessary. Such licenses shall be granted as a matter of right unless conditions exist which are grounds for a cancellation or revocation of a license as hereinafter set forth. [1943 c 117 § 3; Rem. Supp. 1943 § 6294–127.]

**19.32.050 License fees—Annual renewal.** (1) The director of agriculture shall collect with each application for a refrigerated locker license, or renewal of such license, an annual fee of ten dollars. All such license and renewal fees shall be deposited in the state's general fund.

(2) Each such license shall expire on December 31st following its date of issue, unless sooner revoked for cause. Renewal may be obtained annually by surrendering to the director of agriculture the old license certificate and paying the required annual license fee. Such license fee shall not be transferable to any person nor be applicable to any location other than that for which originally issued. [1967 c 240 § 39; 1943 c 117 § 4; Rem. Supp. 1943 § 6294–128.]

**Severability—1967 c 240:** See note following RCW 43.23.010.

*Locker license fund abolished and funds transferred to state general fund: See 1967 c 240 §§ 47 and 48.*

**19.32.055 Stipulated license fee to replace existent charges.** Payment of the license fee stipulated herein shall be accepted in lieu of any and all existing fees and charges for like purposes or intent which may be existent prior to the adoption of this chapter. [1943 c 117 § 15; Rem. Supp. 1943 § 6294–139.]

**19.32.060 Revocation or suspension of licenses—Grounds—Notice—Review.** (1) The director of agriculture may cancel or suspend any such license if he finds after proper investigation that (a) the licensee has violated any provision of this chapter or of any other law of this state relating to the operation of refrigerated lockers or of the sale of any human food in connection therewith, or any regulation effective under any act the administration of which is in the charge of the department of agriculture, or (b) the licensed refrigerated locker premises or any equipment used therein or in connection therewith is in an unsanitary condition and the licensee has failed or refused to remedy the same within ten days after receipt from the director of agriculture of written notice to do so.

(2) No license shall be revoked or suspended by the director without delivery to the licensee of a written statement of the charge involved and an opportunity to answer such charge within ten days from the date of such notice.

(3) Any order made by the director suspending or revoking any license may be reviewed by certiorari in the superior court of the county in which the licensed premises are located, within ten days from the date notice in writing of the director's order revoking or suspending such license has been served upon him. [1943 c 117 § 5; Rem. Supp. 1943 § 6294–129. Formerly RCW 19.32-.060 through 19.32.080.]

**19.32.090 Revocation or suspension of licenses—Witnesses—Evidence.** In any proceeding under this chapter the director of agriculture may administer oaths and issue subpoenas, summon witnesses and take testimony of any person within the state of Washington. [1943 c 117 § 10; Rem. Supp. 1943 § 6294–134.]

**19.32.100 Equipment—Operation—Controls—Temperatures.** Every operator of a refrigerated locker plant shall provide a complete refrigeration system with adequate capacity and accurate and reliable controls for the maintenance of the following uniform temperatures of the various refrigerated rooms if provided, under extreme conditions of outside temperatures and under peak load conditions in the normal operation of the plant. The temperatures of the following rooms shall not exceed:

(1) Chill room, temperatures within two degrees (Fahrenheit) plus or minus of thirty-five degrees (Fahrenheit) with a tolerance of ten degrees (Fahrenheit) after fresh food is put in for chilling;

(2) Sharp freeze room, sharp freeze compartments, temperatures of minus ten degrees (Fahrenheit) or lower, or temperatures of zero degrees (Fahrenheit) or lower when forced air circulation is employed, with a tolerance of ten degrees (Fahrenheit) for either type of installation after fresh food is put in for freezing;

(3) Locker room temperatures of zero degrees (Fahrenheit) with a tolerance of twelve degrees (Fahrenheit) plus. [1943 c 117 § 9; Rem. Supp. 1943 § 6294-133.]

**19.32.110 Diseased persons not to be employed—Health certificates.** (1) No person afflicted with any contagious or infectious disease shall work or be permitted to work in or about any refrigerated locker, nor in the handling, dealing nor processing of any human food in connection therewith.

(2) No person shall work or be permitted to work in or about any refrigerated locker in the handling, processing or dealing in any human food or any ingredient thereof without holding a certificate from a physician, duly accredited for that purpose by the state board of health, certifying that such person has been examined and found free from any contagious or infectious disease. The state board of health may fix a maximum fee, not exceeding two dollars which may be charged by a physician for such examination. Such certificate shall be effective for a period of six months and thereafter must be renewed following proper physical examination as aforesaid. Where such certificate is required and provided under municipal ordinance upon examination deemed adequate by the state board of health, certificates issued thereunder shall be sufficient under this chapter.

(3) Any such certificate shall be revoked by the state board of health at any time the holder thereof is found, after proper physical examination, to be afflicted with any communicable or infectious disease. Refusal of any person employed in such premises to submit to proper and reasonable physical examination upon written demand by the state board of health or of the director of agriculture shall be cause for revocation of that person's health certificate. [1943 c 117 § 6; Rem. Supp. 1943 § 6294-130. Formerly RCW 19.32.110 through 19.32.140.]

**19.32.150 Inspection of lockers and vehicles.** The director of agriculture shall cause to be made periodically a thorough inspection of each establishment

licensed under this chapter to determine whether or not the premises are constructed, equipped and operated in accordance with the requirements of this chapter and of all other laws of this state applicable to the operation either of refrigerated lockers or of the handling of human food in connection therewith, and of all regulations effective under this chapter relative to such operation. Such inspection shall also be made of each vehicle used by [an] operator of refrigerated lockers or of an establishment handling human food in connection therewith, when such vehicle is used in transporting or distributing human food products to or from refrigerated lockers within this state. [1943 c 117 § 8; Rem. Supp. 1943 § 6294-132.]

**19.32.160 Liability for loss of goods.** The liability of the owner or operator of refrigerated lockers for loss of goods in lockers or in operator's care shall be limited to negligence of operation or of employees. [1943 c 117 § 12; Rem. Supp. 1943 § 6294-136. FORMER PARTS OF SECTION: (i) 1943 c 117 § 14; Rem. Supp. 1943 § 6294-138, now codified as RCW 19.32.165. (ii) 1943 c 117 § 13, part; Rem. Supp. 1943 § 6294-137, part, now codified in RCW 19.32.170.]

**19.32.165 Owners or operators not warehousemen.** Persons who own or operate refrigerated locker plants shall not be construed to be warehousemen, nor shall receipts or other instruments issued by such persons in the ordinary conduct of their business be construed to be negotiable warehouse receipts. [1943 c 117 § 14; Rem. Supp. 1943 § 6294-138. Formerly RCW 19.32.160, part.]

**19.32.170 Operator's lien—Liability for game law violations.** Every operator of a locker shall have a lien upon all the property of every kind in his possession for all lockers' rentals, processing, handling or other charges due. Such lien may be foreclosed under the procedures as provided in chapter 60.10 RCW and RCW 61.12.162.

(1) Locker owners and operators shall not be responsible for liability for violations of game or other laws by renters unless the contents of the locker are under the control of the locker plant operator. [1969 c 82 § 10; 1943 c 117 § 13; Rem. Supp. 1943 § 6294-137. Formerly RCW 19.32.160, part.]

**19.32.180 Violations—Penalty.** Any person violating any provision of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars for the first offense, and not less than two hundred dollars for the second and for each and every subsequent offense, and each day that any violation continues shall constitute a separate offense. [1943 c 117 § 11; Rem. Supp. 1943 § 6294-135.]

**19.32.900 Severability—1943 c 117.** If any clause, sentence, paragraph, section or part of this chapter shall, for any reason, be adjudged or decreed to be invalid by any court of competent jurisdiction, such judgment or



decree shall not affect, impair nor invalidate the remainder of this chapter, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which said judgment or decree shall have been rendered. [1943 c 117 § 16.]

### Chapter 19.36 FRAUDS, STATUTE OF

#### Sections

- 19.36.010 Contracts, etc., void unless in writing.  
19.36.020 Deeds, etc., in trust for grantor void as to creditors.

*Assignment for benefit of creditors: Chapter 7.08 RCW.*

*Contracts by telegraph: RCW 5.52.010.*

*Contracts of minors: Chapters 26.28 and 26.30 RCW.*

*Conveyances of real property: RCW 64.04.010.*

*Fraudulent conveyances: Chapter 19.40 RCW.*

*Leases of real property: RCW 59.04.010.*

**19.36.010 Contracts, etc., void unless in writing.** In the following cases, specified in this section, any agreement, contract and promise shall be void, unless such agreement, contract or promise, or some note or memorandum thereof, be in writing, and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized, that is to say: (1) Every agreement that by its terms is not to be performed in one year from the making thereof; (2) Every special promise to answer for the debt, default, or misdoings of another person; (3) Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry; (4) Every special promise made by an executor or administrator to answer damages out of his own estate; (5) An agreement authorizing or employing an agent or broker to sell or purchase real estate for compensation or a commission. [1905 c 58 § 1; RRS § 5825. Prior: Code 1881 § 2325; 1863 p 412 § 2; 1860 p 298 § 2; 1854 p 403 § 2.]

**19.36.020 Deeds, etc., in trust for grantor void as to creditors.** That all deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void as against the existing or subsequent creditors of such person. [Code 1881 § 2324; RRS § 5824. Prior: 1863 p 412 § 1; 1860 p 298 § 1; 1854 p 403 § 1.]

### Chapter 19.40 FRAUDULENT CONVEYANCES

#### Sections

- 19.40.010 Definition of terms.  
19.40.020 Insolvency.  
19.40.030 Fair consideration.  
19.40.040 Conveyances by insolvent.  
19.40.050 Conveyances by persons in business.  
19.40.060 Conveyances by a person about to incur debts.  
19.40.070 Conveyances made and obligations incurred with intent to defraud.  
19.40.080 Conveyance of partnership property.  
19.40.090 Rights of creditors whose claims have matured.  
19.40.100 Rights of creditors whose claims have not matured.  
19.40.110 Cases not provided for in chapter.

19.40.120 Construction of chapter.

19.40.130 Short title.

*Assignment for benefit of creditors: Chapter 7.08 RCW.*

*Conveyances of property to qualify for public assistance: RCW 74.08-.331-74.08.338.*

*Disposal of property to defraud creditors, etc.: RCW 9.45.080-9.45.100.*

**19.40.010 Definition of terms.** In this chapter "Assets" of a debtor means property not exempt from liability for his debts. To the extent that any property is liable for any debts of the debtor, such property shall be included in his assets.

"Conveyance" includes every payment of money, assignment, release, transfer, lease, mortgage or pledge of tangible or intangible property, and also the creation of any lien or incumbrance, except when given to a trustee or assignee for the benefit of all unsecured creditors.

"Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.

"Debt" includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent. [1945 c 136 § 1; RRS § 5854-40.]

**19.40.020 Insolvency.** (1) A person is insolvent when the present fair salable value of his assets is less than the amount that will be required to pay his probable liability on his existing debts as they become absolute and matured.

(2) In determining whether a partnership is insolvent there shall be added to the partnership property the present fair salable value of the separate assets of each general partner in excess of the amount probably sufficient to meet the claims of his separate creditors, and also the amount of any unpaid subscription to the partnership of each limited partner, provided the present fair salable value of the assets of such limited partner is probably sufficient to pay his debts, including such unpaid subscription. [1945 c 136 § 2; RRS § 5854-41.]

*Partnerships: Title 25 RCW.*

**19.40.030 Fair consideration.** Fair consideration is given for property, or obligation,

(1) When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or

(2) When such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained. [1945 c 136 § 3; RRS § 5854-42.]

**19.40.040 Conveyances by insolvent.** Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration. [1945 c 136 § 4; RRS § 5854-43.]

**19.40.050 Conveyances by persons in business.** Every conveyance made without fair consideration when the



person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent. [1945 c 136 § 5; RRS § 5854-44.]

**19.40.060 Conveyances by a person about to incur debts.** Every conveyance made and every obligation incurred without fair consideration when the person making the conveyance or entering into the obligation intends or believes that he will incur debts beyond his ability to pay as they mature, is fraudulent as to both present and future creditors. [1945 c 136 § 6; RRS § 5854-45.]

**19.40.070 Conveyances made and obligations incurred with intent to defraud.** Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay or defraud either present or future creditors, is fraudulent as to both present and future creditors. [1945 c 136 § 7; RRS § 5854-46.]

**19.40.080 Conveyance of partnership property.** Every conveyance of partnership property and every partnership obligation incurred when the partnership is or will be thereby rendered insolvent, is fraudulent as to partnership creditors, if the conveyance is made or obligation is incurred.

(1) To a partner, whether with or without a promise by him to pay partnership debts, or

(2) To a person not a partner without fair consideration to the partnership as distinguished from consideration to the individual partners. [1945 c 136 § 8; RRS § 5854-47.]

**19.40.090 Rights of creditors whose claims have matured.** (1) Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately or mediately from such a purchaser,

(a) Have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim, or

(b) Disregard the conveyance and attach or levy execution upon the property conveyed.

(2) A purchaser who without actual fraudulent intent has given less than a fair consideration for the conveyance or obligation, may retain the property or obligation as security for repayment. [1945 c 136 § 9; RRS § 5854-48.]

**19.40.100 Rights of creditors whose claims have not matured.** Where a conveyance made or obligation incurred is fraudulent as to a creditor whose claim has not matured he may proceed in a court of competent jurisdiction against any person against whom he could have proceeded had his claim matured, and the court may,

(1) Restrain the defendant from disposing of his property,

(2) Appoint a receiver to take charge of the property,

(3) Set aside the conveyance or annul the obligation, or

(4) Make any order which the circumstances of the case may require. [1945 c 136 § 10; RRS § 5854-49.]

*Assignment for benefit of creditors: Chapter 7.08 RCW.*

*Injunctions: Chapter 7.40 RCW.*

*Receivers: Chapter 7.60 RCW.*

**19.40.110 Cases not provided for in chapter.** In any case not provided for in this chapter the rules of law and equity including the law merchant, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy or other invalidating cause shall govern. [1945 c 136 § 11; RRS § 5854-50.]

*False representations: Chapter 9.38 RCW.*

*Frauds and swindles: Chapters 9.45 and 9A.60 RCW.*

**19.40.120 Construction of chapter.** This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1945 c 136 § 12; RRS § 5854-51.]

**19.40.130 Short title.** This act may be cited as the "Uniform Fraudulent Conveyance Act." [1945 c 136 § 13.]

## Chapter 19.44 GRIST MILLS

### Sections

19.44.010	Duties of owners and operators.
19.44.020	Assistance in carrying grist.
19.44.030	Limit of liability for loss.
19.44.040	Tolls.
19.44.050	Violations and penalties.

*Weighing commodities transported for sale: Chapter 15.80 RCW.*

**19.44.010 Duties of owners and operators.** The owner or occupier of any grist mill shall well and sufficiently grind the grain brought to his mill for that purpose in due time and in the order in which it shall be received, and shall be accountable for the safe keeping of all grain received in such mill, for the purpose of being ground therein, and shall deliver, it when ground, or ground and bolted, as the case may be, with the bag or cask in which it was brought when demanded, but every owner or occupier of a mill may grind his own grain at any time; and nothing in this section contained shall be construed to compel the owners or occupants of mills to grind for sale or merchant work. [Code 1881 § 2533; RRS § 5844. Prior: 1863 p 493 § 2; 1854 p 398 § 2.]

**19.44.020 Assistance in carrying grist.** Every owner or occupier of such grist mill shall assist in carrying grists in and out of said mill, when the owner of such grist is unable to do the same. [Code 1881 § 2536; RRS § 5847. Prior: 1863 p 494 § 5; 1854 p 398 § 5.]

**19.44.030 Limit of liability for loss.** Nothing contained in RCW 19.44.010 shall be so construed as to charge the owner or occupant of any mill, for the loss of any grain, bag or cask, which shall happen by robbery, fire or inevitable accident, without the fault of such owner or occupants, his agents or servants. [Code 1881 § 2534; RRS § 5845. Prior: 1863 p 493 § 3; 1854 p 398 § 3.]

**19.44.040 Tolls.** The owners or occupiers of all mills in this state, moved by water or other power, shall be entitled to one-eighth part of all wheat, rye or other grain, ground and bolted, or ground and not bolted, and no more: *Provided, however,* Said owner or occupier shall not be permitted to grind his own grain to the exclusion of other grists, when said mill is used and occupied as a grist mill. [Code 1881 § 2532; RRS § 5843. Prior: 1863 p 493 § 1; 1854 p 398 § 1.]

**19.44.050 Violations and penalties.** Every miller, or owner or occupant of a grist mill, who shall not well and sufficiently grind any grain as aforesaid, or not in due turn, as the same shall be brought, or who shall exact, or take more toll, than is herein allowed, shall in every such case be liable to a fine of not less than three nor more than twenty dollars, and shall also be liable to the party injured in double the actual damages sustained by him. [Code 1881 § 2535; RRS § 5846. Prior: 1863 p 494 § 4; 1854 p 398 § 4.]

### Chapter 19.48 HOTELS, LODGING HOUSES, ETC.— RESTAURANTS

#### Sections

- 19.48.010 Definitions.
- 19.48.020 Record of guests—Hotels and trailer camps.
- 19.48.030 Liability for loss of valuables when safe or vault furnished—Limitation.
- 19.48.070 Liability for loss of baggage and other property—Limitation—Storage—Disposal.
- 19.48.110 Obtaining hotel, restaurant, lodging house, etc., accommodations by fraud—Penalty.
- 19.48.900 Severability—1929 c 216.

*Alcoholic beverage control: Title 66 RCW.*

*Discrimination, law against: Chapter 49.60 RCW, RCW 9.91.010.*

*Fraud on innkeeper, penalty: RCW 9.45.040.*

*Hotel and restaurant safety regulations: Chapter 70.62 RCW.*

*Lien of hotels and lodging and boarding houses: Chapter 60.64 RCW.*

**19.48.010 Definitions.** Any building held out to the public to be an inn, hotel or public lodging house or place where sleeping accommodations, whether with or without meals, or the facilities for preparing the same, are furnished for hire to transient guests, in which fifteen or more rooms are used for the accommodation of such guests, shall for the purposes of this chapter and chapter 60.64 RCW, or any amendment thereof, only, be defined to be a hotel, and whenever the word hotel shall occur in this chapter and chapter 60.64 RCW, or any amendment thereof, it shall be construed to mean a hotel as herein described. [1929 c 216 § 1; 1915 c 190 § 1; 1909 c 29 § 1; RRS § 6860. FORMER PART OF SECTION: 1933 c 114 § 1, part; 1929 c 216 § 2, part;

1915 c 190 § 3, part; 1890 p 95 § 1, part; RRS § 6862, part, now codified in RCW 19.48.030.]

*Guest defined: RCW 60.64.010.*

**19.48.020 Record of guests—Hotels and trailer camps.** Every hotel and trailer camp shall keep a record of the arrival and departure of its guests in such a manner that the record will be a permanent one for at least one year from the date of departure. [1955 c 138 § 1; 1915 c 190 § 2; RRS § 6861.]

**19.48.030 Liability for loss of valuables when safe or vault furnished—Limitation.** Whenever the proprietor, keeper, owner, operator, lessee, or manager of any hotel, lodging house or inn shall provide a safe or vault for the safekeeping of any money, bank notes, jewelry, precious stones, ornaments, railroad mileage books or tickets, negotiable securities or other valuable papers, bullion, or other valuable property of small compass belonging to the guests, boarders or lodgers of such hotel, lodging house or inn, and shall notify the guests, boarders or lodgers thereof by posting a notice in three or more public and conspicuous places in the office, elevators, public rooms, elevator lobbies, public corridors, halls or entrances, or in the public parlors of such hotel, lodging house or inn, stating the fact that such safe or vault is provided in which such property may be deposited; and if such guests, boarders or lodgers shall neglect to deliver such property to the person in charge of such office, for deposit in the safe or vault, the proprietor, keeper, owner, operator, lessee or manager, whether individual, partnership or corporation, of such hotel, lodging house or inn shall not be liable for any loss or destruction of any such property, or any damage thereto, sustained by such guests, boarders or lodgers, by negligence of such proprietor, keeper, owner, operator, lessee or manager, or his, her, their or its employees, or by fire, theft, burglary, or any other cause whatsoever; but no proprietor, keeper, owner, operator, lessee or manager of any hotel, lodging house or inn, shall be obliged to receive property on deposit for safekeeping exceeding one thousand dollars in value; and if such guests, boarders or lodgers shall deliver such property to the person in charge of said office for deposit in such safe or vault, said proprietor, keeper, owner, operator, lessee, or manager, shall not be liable for the loss or destruction thereof, or damage thereto, sustained by such guests, boarders or lodgers in any such hotel, lodging house, or inn, exceeding the sum of one thousand dollars, notwithstanding said property may be of greater value, unless by special arrangement in writing with such proprietor, keeper, owner, operator, lessee or manager: *Provided, however,* That in case of such deposit of such property, the proprietor, keeper, owner, operator, lessee or manager of such hotel, lodging house, or inn, shall in no event be liable for loss or destruction thereof, or damage thereto, unless caused by the theft or gross negligence of such proprietor, keeper, owner, operator, lessee, or manager, of his, her, their, or its agents, servants or employees. [1933 c 114 § 1; 1929 c 216 § 2; 1915 c 190 § 3; 1890 p 95 § 1; RRS § 6862. Formerly RCW 19.48.010, part, 19.48.030 through 19.48.060.]

**19.48.070 Liability for loss of baggage and other property—Limitation—Storage—Disposal.**

Except as provided for in RCW 19.48.030, the proprietor, keeper, owner, operator, lessee or manager, whether individual, partnership or corporation, of a hotel, lodging house, or inn, shall not be liable for the loss or destruction of, or damage to any personal property brought or sent into such hotel, lodging house, or inn, by or for any of the guests, boarders or lodgers thereof, unless such loss, destruction or damage is occasioned by the gross negligence of such proprietor, keeper, owner, operator, lessee or manager, or his, her, their, or its agents, servants or employees; but in no event shall such liability exceed the sum of two hundred dollars, unless such proprietor, keeper, owner, operator, lessee, or manager, shall have contracted in writing with such guest, boarder, or lodger to assume a greater liability: *Provided, however,* That in no event shall liability of the proprietor, keeper, owner, operator, lessee or manager, or his, her, their, or its agents, servants or employees, of a hotel, lodging house, or inn exceed the following: For a guest, boarder or lodger, paying twenty-five cents per day, for lodging, or for any person who is not a guest, boarder or lodger, the liability for loss, destruction or damage, shall not exceed the sum of fifty dollars for a trunk and contents, ten dollars for a suitcase or valise and contents, five dollars for a box, bundle or package, and ten dollars for wearing apparel or miscellaneous effects. For a guest, boarder or lodger, paying fifty cents a day for lodging, the liability for loss, destruction or damage shall not exceed seventy-five dollars for a trunk and contents, twenty dollars for a suitcase or valise and contents, ten dollars for a box, bundle or package and contents, and twenty dollars for wearing apparel and miscellaneous effects. For a guest, boarder or lodger paying more than fifty cents per day for lodging, the liability for loss, destruction or damage shall not exceed one hundred fifty dollars for a trunk and contents, fifty dollars for a suitcase or valise and contents, ten dollars for a box, bundle or package and contents, and fifty dollars for wearing apparel and miscellaneous effects, unless in such case such proprietor, keeper, owner, operator, lessee, or manager of such hotel, lodging house, or inn, shall have consented in writing to assume a greater liability: *And provided further,* Whenever any person shall suffer his baggage or property to remain in any hotel, lodging house, or inn, after leaving the same as a guest, boarder or lodger, and after the relation of guest, boarder or lodger between such person and the proprietor, keeper, owner, operator, lessee, or manager of such hotel, lodging house, or inn, has ceased, or shall forward or deliver the same to such hotel, lodging house, or inn, before, or without, becoming a guest, boarder, or lodger thereof, and the same shall be received into such hotel, lodging house, or inn, the liability of such proprietor, keeper, owner, operator, lessee, or manager thereof shall in no event exceed the sum of one hundred dollars, and such proprietor, keeper, owner, operator, lessee, or manager, may at his, her, their or its option, hold such baggage or property at the risk of such owner thereof; and when any baggage or property has been kept or stored by such hotel, lodging house, or inn, for six months after

such relation of guest, boarder or lodger has ceased, or when such relation does not exist, after six months from the receipt of such baggage or property in such hotel, lodging house, or inn, such proprietor, keeper, owner, operator, lessee, or manager, may, if he, she, they or it so desires, sell the same at public auction in the manner now or hereinafter provided by law for the sale of property to satisfy a hotel keeper's lien, and from the proceeds of such sale pay or reimburse himself the expenses incurred for advertisement and sale, as well as any storage that may have accrued, and any other amounts owing by such person to said hotel, lodging house, or inn: *Provided,* That when any such baggage or property is received, kept or stored therein after such relation does not exist, such proprietor, keeper, owner, operator, lessee, or manager, may, if he, she, or it, so desires, deliver the same at any time to a storage or warehouse company for storage, and in such event all responsibility or liability of such hotel, lodging house, or inn, for such baggage or property, or for storage charges thereon, shall thereupon cease and terminate. [1929 c 216 § 3; 1917 c 57 § 1; 1915 c 190 § 4; RRS § 6863. Formerly RCW 19.48.070 through 19.48.100.]

**19.48.110 Obtaining hotel, restaurant, lodging house, etc., accommodations by fraud—Penalty.** Any person who shall wilfully obtain food, money, credit, lodging or accommodation at any hotel, inn, restaurant, boarding house or lodging house, without paying therefor, with intent to defraud the proprietor, owner, operator or keeper thereof; or who obtains food, money, credit, lodging or accommodation at such hotel, inn, restaurant, boarding house or lodging house, by the use of any false pretense; or who, after obtaining food, money, credit, lodging, or accommodation at such hotel, inn, restaurant, boarding house, or lodging house, removes or causes to be removed from such hotel, inn[,] restaurant, boarding house or lodging house, his or her baggage, without the permission or consent of the proprietor, manager or authorized employee thereof, before paying for such food, money, credit, lodging or accommodation, shall be guilty of a gross misdemeanor: *Provided,* That if the aggregate amount of food, money, lodging or accommodation, or credit so obtained is seventy-five dollars or more such person shall be guilty of a felony. Proof that food, money, credit, lodging or accommodation were obtained by false pretense or by false or fictitious show or pretense of any baggage or other property, or that the person refused or neglected to pay for such food, money, credit, lodging or accommodation on demand, or that he or she gave in payment for such food, money, credit, lodging or accommodation, negotiable paper on which payment was refused, or that he or she absconded, or departed from, or left, the premises without paying for such food, money, credit, lodging or accommodation, or that he or she removed, or attempted to remove, or caused to be removed, or caused to be attempted to be removed his or her property or baggage, shall be prima facie evidence of the fraudulent intent hereinbefore mentioned. [1974 ex.s. c 21 § 1; 1929 c 216 § 6; 1915 c 190 § 7; 1890 p 96 § 2; RRS § 6866. Formerly RCW 19.48.110, 19.48.120.]

*Fraud on innkeeper, restaurant, etc.: RCW 9.45.040.*

**19.48.900 Severability—1929 c 216.** In the event that any section or any part of any section of this act, or this act as it applies to any persons or under any circumstances, should be adjudged invalid, such adjudication shall not affect or impair the validity of the remainder of this act, or the act as it applies to other persons, and under other circumstances. [1929 c 216 § 7.]

### Chapter 19.52 INTEREST—USURY

#### Sections

- 19.52.005 Declaration of policy.
- 19.52.010 Rate in absence of agreement.
- 19.52.020 Highest rate permissible—Setup charges.
- 19.52.030 Usury—Penalty upon suit on contract—Costs and attorneys' fees.
- 19.52.032 Declaratory judgment action to establish usury—Time limitations for commencing.
- 19.52.034 Application of chapter 19.52 RCW to loan or forbearance made outside state.
- 19.52.036 Application of consumer protection act.
- 19.52.060 Interest on charges in excess of published rates.
- 19.52.080 Defense of usury or maintaining action thereof prohibited if transaction exclusively commercial or business—Exceptions.

*Interest on judgments: RCW 4.56.110.*

*Interest rates on warrants: Chapter 39.56 RCW.*

*Rates of interest on pledged property: RCW 19.60.060.*

**19.52.005 Declaration of policy.** RCW 19.52.005, 19.52.020, 19.52.030, 19.52.032, 19.52.034, and 19.52.036 are enacted in order to protect the residents of this state from debts bearing burdensome interest rates; and in order to better effect the policy of this state to use this state's policies and courts to govern the affairs of our residents and the state; and in recognition of the duty to protect our citizens from oppression generally. [1967 ex.s. c 23 § 2.]

**Severability—1967 ex.s. c 23:** "If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby." [1967 ex.s. c 23 § 8.]

**Savings—1967 ex.s. c 23:** "The provisions of this 1967 amendatory act shall not apply to transactions entered into prior to the effective date hereof." [1967 ex.s. c 23 § 9.]

The foregoing annotations appeared in chapter 23, Laws of 1967 ex.s. Chapter 23, Laws of 1967 ex.s. is codified as RCW 62A.3-515, 19.52.005, 19.52.020, 19.52.030, 19.52.032, 19.52.034 and 19.52.036.

**19.52.010 Rate in absence of agreement.** Every loan or forbearance of money, goods, or thing in action shall bear interest at the rate of six percent per annum where no different rate is agreed to in writing between the parties. The discounting of commercial paper, where the borrower makes himself liable as maker, guarantor or indorser, shall be considered as a loan for the purposes of this act. [1899 c 80 § 1; RRS § 7299. Prior: 1895 c 136 § 1; 1893 c 20 § 1; Code 1881 § 2368; 1863 p 433 § 1; 1854 p 380 § 1.]

**\*Reviser's note:** "this act" (1899 c 80) is codified as RCW 4.56.110 (interest on judgments), RCW 19.52.010-19.52.030 and 39.56.010-39.56.030 (interest on state and municipal warrants).

**19.52.020 Highest rate permissible—Setup charges.** Any rate of interest not exceeding twelve percent per annum agreed to in writing by the parties to the contract shall be legal, and no person shall directly or indirectly take or receive in money, goods, or things in action, or in any other way, any greater interest, sum or value for the loan or forbearance of any money, goods or things in action than twelve percent per annum: *Provided*, That in any loan of money in which the funds advanced do not exceed the sum of five hundred dollars, a setup charge may be charged and collected by the lender, and such setup charge shall not be considered interest hereunder: *Provided further*, That such setup charge does not exceed four percent of the amount of funds advanced, or fifteen dollars, whichever is the lesser, except that on loans of under one hundred dollars a minimum not exceeding four dollars may be so charged. [1967 ex.s. c 23 § 4; 1899 c 80 § 2; RRS § 7300. Prior: 1895 c 136 § 2; 1893 c 20 § 3; Code 1881 § 2369; 1863 p 433 § 2; 1854 p 380 § 2.]

**19.52.030 Usury—Penalty upon suit on contract—Costs and attorneys' fees.** (1) If a greater rate of interest than is allowed by statute shall be contracted for or received or reserved, the contract shall be usurious, but shall not, therefore, be void. If in any action on such contract proof be made that greater rate of interest has been directly or indirectly contracted for or taken or reserved, the creditor shall only be entitled to the principal, less the amount of interest accruing thereon at the rate contracted for; and if interest shall have been paid, the creditor shall only be entitled to the principal less twice the amount of the interest paid, and less the amount of all accrued and unpaid interest; and the debtor shall be entitled to costs and reasonable attorneys' fees plus the amount by which the amount he has paid under the contract exceeds the amount to which the creditor is entitled: *Provided*, That the debtor may not commence an action on the contract to apply the provisions of this section if a loan or forbearance is made to a corporation engaged in a trade or business for the purposes of carrying on said trade or business unless there is also, in connection with such loan or forbearance, the creation of liability on the part of a natural person or his property for an amount in excess of the principal plus interest allowed pursuant to RCW 19.52.020. The reduction in principal shall be applied to diminish pro rata each future installment of principal payable under the terms of the contract.

(2) The acts and dealings of an agent in loaning money shall bind the principal, and in all cases where there is usurious interest contracted for by the transaction of any agent the principal shall be held thereby to the same extent as though he had acted in person. And where the same person acts as agent of the borrower and lender, he shall be deemed the agent of the lender for the purposes of this act. If the agent of both the borrower and lender, lender only, transacts a usurious loan for a commission or fee, such agent shall be liable to his principal for the amount of the commission or fee received or reserved by the agent, and liable to the lender for the loss suffered by the lender as a result of

the application of <sup>2</sup>this act. [1967 ex.s. c 23 § 5; 1899 c 80 § 7; RRS § 7304. Prior: 1895 c 136 § 5; 1893 c 20 § 3. Formerly RCW 19.52.030 through 19.52.050.]

**Reviser's note:** <sup>1</sup>"this act", (1890 c 80) see note following RCW 19.52.010.

<sup>2</sup>"this act"; phrase added by 1967 ex.s. c 23 § 5; 1967 ex.s. c 23 is codified as RCW 62A.3-515, 19.52.005, 19.52.020, 19.52.030, 19.52-.032, 19.52.034 and 19.52.036.

**19.52.032 Declaratory judgment action to establish usury—Time limitations for commencing.** The debtor, if a natural person, or the creditor may bring an action for declaratory judgment to establish whether a loan or forbearance contract is or was usurious, and such an action shall be considered an action on the contract for the purposes of applying the provisions of RCW 19.52-.030. Such an action shall be brought against the current creditor or debtor on the contract or, if the loan or debt has been fully repaid, by the debtor against the creditor to whom the debtor was last indebted on the contract. No such an action shall be commenced after six months following the date the final payment becomes due, whether by acceleration or otherwise, nor after six months following the date the principal is fully paid, whichever first occurs. If the debtor commences such an action and fails to establish usury, and if the court finds the action was frivolously commenced, the defendant or defendants may, in the court's discretion, recover reasonable attorney's fees from the debtor. [1967 ex.s. c 23 § 6.]

**19.52.034 Application of chapter 19.52 RCW to loan or forbearance made outside state.** Whenever a loan or forbearance is made outside Washington state to a person then residing in this state the usury laws found in chapter 19.52 RCW, as now or hereafter amended, shall be applicable in all courts of this state to the same extent such usury laws would be applicable if the loan or forbearance was made in this state. [1967 ex.s. c 23 § 3.]

**19.52.036 Application of consumer protection act.** Entering into or transacting a usurious contract is hereby declared to be an unfair act or practice in the conduct of commerce for the purpose of the application of the consumer protection act found in chapter 19.86 RCW. [1967 ex.s. c 23 § 7.]

**19.52.060 Interest on charges in excess of published rates.** Any corporation, partnership or individual who furnishes the public any goods, wares, merchandise, pledge, security, insurance or transportation of which the price, rate or tariff is by law required to be published, shall, when any price, rate or tariff is charged in excess of the existing and established price, rate or tariff, refund to the person, partnership or corporation so overcharge, or to the assignee of such claim, the amount of such overcharge, and on failure so to do, the claim for such overcharge shall bear interest at the rate of eight percent per annum until paid. [1907 c 187 § 1; RRS § 5841.]

**19.52.080 Defense of usury or maintaining action thereon prohibited if transaction exclusively commercial or business—Exceptions.** Corporations, Massachusetts trusts, associations, trusts, general partnerships, joint ventures, limited partnerships, and persons may not plead the defense of usury nor maintain any action thereon or therefor if the transaction was exclusively for commercial or business purposes: *Provided, however,* That this section shall not apply to a consumer transaction of any amount, or to a commercial or business transaction not exceeding fifty thousand dollars.

Consumer transactions, as used in this section, shall mean transactions primarily for personal, family, or household purposes. [1975 1st ex.s. c 180 § 1; 1970 ex.s. c 97 § 2; 1969 ex.s. c 142 § 1.]

## Chapter 19.56 UNSOLICITED GOODS

### Sections

19.56.010 Newspaper mailed without authority is gift.  
19.56.020 Goods mailed without authority are gifts.

*Advertising, crimes relating to: Chapter 9.04 RCW.*

*Legal newspaper, qualifications, approval, etc.: Chapter 65.16 RCW.*

*Libel and slander: Chapter 9.58 RCW.*

**19.56.010 Newspaper mailed without authority is gift.** Whenever any person, company or corporation owning or controlling any newspaper or periodical of any kind, or whenever any editor or proprietor of any such newspaper or periodical shall mail or send any such newspaper or periodical to any person or persons in this state without first receiving an order for said newspaper or periodical from such person or persons to whom said newspaper or periodical is mailed or sent, [it] shall be deemed to be a gift, and no debt or obligation shall accrue against such person or persons, whether said newspaper or periodical is received by the person or persons to whom it is sent or not. [1890 p 460 § 1; RRS § 5842.]

**19.56.020 Goods mailed without authority are gifts.** Unless otherwise agreed, where unsolicited goods are mailed to a person, he has a right to accept delivery of such goods as a gift only, and is not bound to return such goods to the sender. If such unsolicited goods are either addressed to or intended for the recipient, he may use them or dispose of them in any manner without any obligation to the sender, and in any action for goods sold and delivered, or in any action for the return of the goods, it shall be a complete defense that the goods were mailed voluntarily and that the defendant did not actually order or request such goods, either orally or in writing. [1967 c 57 § 1.]

## Chapter 19.60 PAWN BROKERS AND SECOND-HAND DEALERS

### Sections

19.60.010 "Pawn broker"—Defined.  
19.60.015 "Second-hand dealer"—Defined.  
19.60.020 Duty to record transactions.  
19.60.030 Inspection of records and goods.

- 19.60.040 Report to chief of police.  
 19.60.050 Retention of property.  
 19.60.060 Rates of interest and other fees—Sale of pledged property.  
 19.60.063 Penalty.  
 19.60.064 Owner of stolen goods entitled to attorney fees and costs when required to bring action for recovery.  
 19.60.065 Second-hand watches—Definitions.  
 19.60.070 Second-hand watches—Tags.  
 19.60.080 Second-hand watches—Invoice—Duplicate.  
 19.60.090 Second-hand watches—Advertising.  
 19.60.100 Second-hand watches—Penalties for violations.

*Larceny—Receiving stolen property: RCW 9A.56.140–9A.56.170.*

**19.60.010 "Pawn broker"—Defined.** Every person engaged, in whole or in part, in the business of loaning money on the security of pledges, deposits or conditional sales of personal property, shall be deemed to be a pawn broker. [1909 c 249 § 235; RRS § 2487. FORMER PARTS OF SECTION: (i) 1909 c 249 § 236; RRS § 2488, now codified as RCW 19.60.015. (ii) 1939 c 89 § 1; RRS § 2488–1, now codified as RCW 19.60.065.]

**19.60.015 "Second-hand dealer"—Defined.** Every person engaged in whole or in part in the business of buying or selling second-hand personal property, metal junk, or melted metals, shall be deemed to be a second-hand dealer. [1909 c 249 § 236; RRS § 2488. Formerly RCW 19.60.010, part.]

**19.60.020 Duty to record transactions.** It shall be the duty of every pawn broker and second-hand dealer doing business in any city of the first class in this state to maintain in his place of business a book or other permanent record in which shall be legibly written in the English language, at the time of each loan, purchase or sale, a record thereof containing—

- (1) The date of the transaction;
- (2) The name of the person or employee conducting the same;
- (3) The name, age, street and house number, and a general description of the dress, complexion, color of hair, and facial appearance of the person with whom the transaction is had;
- (4) The name and street and house number of the owner of the property bought or received in pledge;
- (5) The street and house number of the place from which the property bought or received in pledge was last removed;
- (6) A description of the property bought or received in pledge, which in the case of watches shall contain the name of the maker and the number of both the works and the case, and in the case of jewelry shall contain a description of all letters and marks inscribed thereon: *Provided*, That when the article bought or received is furniture, or the contents of any house or room actually inspected on the premises, a general record of the transaction shall be sufficient;
- (7) The price paid or the amount loaned;
- (8) The names and street and house numbers of all persons witnessing the transaction; and
- (9) The number of any pawn ticket issued therefor. [1909 c 249 § 229; RRS § 2481.]

*Record of description of second-hand watches: RCW 19.60.080.*

**19.60.030 Inspection of records and goods.** Such record, and all goods received, shall at all times during the ordinary hours of business be open to the inspection of the prosecuting attorney or of any peace officer. [1909 c 249 § 230; RRS § 2482.]

**19.60.040 Report to chief of police.** Every pawn broker and second-hand dealer doing business in any city of the first and second class shall, before noon of each day, furnish to the chief of police of such city, on such forms as such chief of police may provide therefor, a full, true and correct transcript of the record of all transactions had on the preceding day, and, having good cause to believe that any property in his possession has been previously lost or stolen, he shall forthwith report such fact to the chief of police, together with the name of the owner, if known, and the date when, and the name of the person from whom the same was received by him. [1909 c 249 § 231; RRS § 2483.]

**19.60.050 Retention of property.** No property bought or received in pledge by any pawn broker or second-hand dealer shall be removed from his place of business, except when redeemed by the owner thereof, within four days after the receipt thereof shall have been reported to the chief of police as herein provided. [1909 c 249 § 232; RRS § 2484.]

*Restoration of stolen property: RCW 9.54.130.*

**19.60.060 Rates of interest and other fees—Sale of pledged property.** All pawn brokers are authorized to charge and receive interest and other fees at the following rates for money loaned on the security of personal property actually received in pledge:

- (1) The interest shall not exceed:
  - (a) For an amount loaned up to \$19.99 – interest at \$1.00 per month;
  - (b) For an amount loaned from \$20.00 to \$39.99 – interest at the rate of \$1.50 per month;
  - (c) For an amount loaned from \$40.00 to \$75.99 – interest at the rate of \$2.00 per month;
  - (d) For an amount loaned from \$76.00 to \$100.99 – interest at the rate of \$2.50 per month;
  - (e) For an amount loaned from \$101.00 to \$125.99 – interest at the rate of \$3.00 per month;
  - (f) For an amount loaned from \$126.00 or more – interest at the rate of three percent a month;
- (2) The fee for the preparation of documents, pledges, or reports required under the laws of the United States of America, the state of Washington, or the counties, cities, towns, or other political subdivisions thereof, shall not exceed:
  - (a) For the amount loaned up to \$4.99 – the sum of \$.50;
  - (b) For the amount loaned from \$5.00 to \$9.99 – the sum of \$2.00;
  - (c) For the amount loaned from \$10.00 to \$19.99 – the sum of \$3.00;
  - (d) For the amount loaned from \$20.00 to \$39.99 – the sum of \$4.00;
  - (e) For the amount loaned from \$40.00 to \$74.99 – the sum of \$5.00;

(f) For the amount loaned from \$75.00 to \$99.99 – the sum of \$7.50;

(g) For the amount loaned from \$100.00 or more – the sum of \$9.00;

(3) The fee for the care, maintenance, insurance relating to, preparation for storage of, and storage of personal property actually received in pledge, shall not exceed:

(a) For precious jewels, jewelry, or other personal property having a value \$100.00 to \$299.99, an amount equal to one-tenth of one percent of the value thereof as agreed upon in writing between the pledgor and the pledgee;

(b) For precious jewels, jewelry, or other personal property having a value exceeding \$300.00, an amount equal to one-twelfth of one percent of the value thereof as agreed upon in writing between the pledgor and the pledgee;

(4) Fees under subsections (2) and (3) may be charged one time only during the term of a pledge, and every person who shall ask or receive a higher rate of interest or discount or other fees on any such loan, or on any actual or pretended sale, or redemption of personal property, or who shall sell any property held for redemption within ninety days after the period for redemption shall have expired, shall be guilty of a misdemeanor.

A copy of this section, set in twelve point type or larger, shall be posted prominently in each premises subject to this chapter. [1973 1st ex.s. c 91 § 1; 1909 c 249 § 234; RRS § 2486.]

*Interest—Usury: Chapter 19.52 RCW.*

**19.60.063 Penalty.** Every pawn broker or second-hand dealer and every clerk, agent or employee of such pawn broker or second-hand dealer, who shall—

(1) Fail to make an entry of any material matter in his book or record kept as provided in RCW 19.60.040; or,

(2) Make any false entry therein; or,

(3) Falsify, obliterate, destroy or remove from his place of business such book or record; or,

(4) Refuse to allow the prosecuting attorney or any peace officer to inspect the same, or any goods in his possession, during the ordinary hours of business; or,

(5) Report any material matter falsely to the chief of police; or,

(6) Having forms provided therefor, shall fail before noon of each day to furnish the chief of police with a full, true and correct transcript of the record of all transactions had on the previous day, it being the intent of this section that Saturday's business may be reported on Monday; or,

(7) Fail to report forthwith to the chief of police the possession of any property which he may have good cause to believe has been lost or stolen, together with the name of the owner, if known, and the date when, and the name of the person from whom the same was received by him; or,

(8) Remove, or allow to be removed from his place of business, except upon redemption by the owner thereof, any property received, within four days after the receipt

thereof shall have been reported to the chief of police; or,

(9) Receive any property from any person under the age of eighteen years, any common drunkard, any habitual user of narcotic drugs, any habitual criminal, any person in an intoxicated condition, any known thief or receiver of stolen property, or any known associate of such thief or receiver of stolen property, whether such person be acting in his own behalf or as the agent of another;

Shall be guilty of a misdemeanor. [1971 ex.s. c 292 § 29; 1909 c 249 § 233; RRS § 2485. Formerly RCW 19.60.110.]

*Severability—1971 ex.s. c 292: See note following RCW 26.28.010.*

*Larceny—Receiving stolen property: RCW 9A.56.140–9A.56.170.*

*Obstructing justice: Chapters 9A.72 and 9A.76 RCW.*

*Restoration of stolen property: RCW 9.54.130.*

**19.60.064 Owner of stolen goods entitled to attorney fees and costs when required to bring action for recovery.** Whenever the owner of stolen goods locates said stolen goods in the possession of a pawnbroker or second-hand dealer, and is forced to bring an action for replevin to recover possession thereof, the owner shall be entitled to reasonable attorney fees and costs in connection with said replevin action. [1972 ex.s. c 114 § 2.]

**19.60.065 Second-hand watches—Definitions.** As used in RCW 19.60.065 through 19.60.100:

"Person" shall be deemed to mean a person, firm, partnership, association or corporation.

"Consumer" shall be deemed to mean an individual, firm, partnership, association or corporation who buys for own use, or for the use of another but not for resale.

A "second-hand" watch shall be deemed to mean: (1) A watch which, as a whole, the case thereof or the movement thereof has been sold to a consumer: *Provided, however,* That a watch which has been so sold, and is thereafter returned, either through an exchange or for credit, to the same person who sold such watch to the consumer, shall not be deemed to be a second-hand watch for the purpose of RCW 19.60.065 through 19.60.100 if such person keeps a written or printed record setting forth the name and address of the consumer, the date of the sale to the consumer, the name of the watch or its maker, and the serial numbers (if any) on the case and the movement of the watch, or other distinguishing numbers or identification marks, the aforesaid record to be kept for at least three years from the date of the sale of the watch and to be open for inspection during all business hours by the prosecuting attorney, or his representative, of the county in which such person is engaged in business; or (2) Any watch whose case or movement, serial numbers or other distinguishing numbers or identification marks have been erased, defaced, removed, altered or covered. [1939 c 89 § 1; RRS § 2488–1. Formerly RCW 19.60.010, part.]

**19.60.070 Second-hand watches—Tags.** Any person, or agent or employee thereof, who sells a second-hand watch, shall affix and keep affixed to the same a



tag with the words "second-hand" legibly written or printed thereon in the English language. For the purposes of this subdivision [section], "sell" shall be deemed to include offer to sell or exchange, expose for sale or exchange, possess with intent to sell or exchange, and sell or exchange. [1939 c 89 § 2; RRS § 2488-2.]

**19.60.080 Second-hand watches—Invoice—Duplicate.** Any person, or agent or employee thereof, who sells a second-hand watch shall deliver to the vendee a written invoice setting forth the name and address of the vendor, the name and address of the vendee, the date of the sale, the name of the watch or its maker, and the serial numbers (if any) or other distinguishing numbers or identification marks on its case and movement. In the event the serial numbers, or other distinguishing numbers or identification marks have been erased, defaced, removed, altered or covered, this shall be set forth in the invoice. A duplicate of the aforesaid invoice shall be kept on file by the vendor of such second-hand watch for at least one year from the date of the sale thereof and shall be open to inspection during all business hours by the prosecuting attorney or his representative of the county in which the vendor is engaged in business. [1939 c 89 § 3; RRS § 2488-3.]

*Record of second-hand watches required: RCW 19.60.020.*

**19.60.090 Second-hand watches—Advertising.** Any person advertising in any manner second-hand watches for sale shall state clearly in such advertising that the watches so advertised are second-hand watches. [1939 c 89 § 4; RRS § 2488-4.]

*False advertising: RCW 9.04.010.*

**19.60.100 Second-hand watches—Penalties for violations.** Any violation of RCW 19.60.065 through 19.60.100 shall constitute a misdemeanor and shall be punishable by a fine of not less than one hundred dollars and not more than five hundred dollars or not less than ten days and not more than one hundred days in jail, or both. [1939 c 89 § 5; RRS § 2488-5.]

#### Chapter 19.64 RADIO BROADCASTING

##### Sections

19.64.010 Liability of owner or operator limited.  
19.64.020 Speaker or sponsor liability not limited.  
19.64.900 Saving—1943 c 229.

*Libel and slander: Chapter 9.58 RCW.*

*Publication of official notices by radio: RCW 65.16.130-65.16.150.*

*Radio broadcasting rights as to horse races: RCW 67.16.110.*

**19.64.010 Liability of owner or operator limited.** Where the owner, licensee, or operator of a radio or television broadcasting station, or the agents or employees thereof, has required a person speaking over said station to submit a written copy of his script prior to such broadcast and has cut such speaker off the air as soon as reasonably possible in the event such speaker deviates from such written script, said owner, licensee, or operator, or the agents or employees thereof, shall not be

liable for any damages, for any defamatory statement published or uttered by such person in or as a part of such radio or television broadcast unless such defamatory statements are contained in said written script. [1943 c 229 § 1; Rem. Supp. 1943 § 998-1.]

**19.64.020 Speaker or sponsor liability not limited.** Nothing contained shall be construed as limiting the liability of any speaker or his sponsor or sponsors for defamatory statements made by such speaker in or as a part of any such broadcast. [1943 c 229 § 2; Rem. Supp. 1943 § 998-2.]

**19.64.900 Saving—1943 c 229.** This chapter shall not be applicable to or affect any cause of action existing at the time this chapter becomes effective. [1943 c 229 § 3.]

#### Chapter 19.68 REBATING BY PRACTITIONERS OF HEALING PROFESSIONS

##### Sections

19.68.010 Rebating prohibited—Penalty.  
19.68.020 Deemed unprofessional conduct.  
19.68.030 License may be revoked or suspended.  
19.68.040 Declaration of intent.

*Physicians, surgeons, dentists, oculists, optometrists, osteopaths, chiropractors, drugless healers, etc.: Title 18 RCW.*

**19.68.010 Rebating prohibited—Penalty.** It shall be unlawful for any person, firm, corporation or association, whether organized as a cooperative, or for profit or nonprofit, to pay, or offer to pay or allow, directly or indirectly, to any person licensed by the state of Washington to engage in the practice of medicine and surgery, drugless treatment in any form, dentistry, or pharmacy and it shall be unlawful for such person to request, receive or allow, directly or indirectly, a rebate, refund, commission, unearned discount or profit by means of a credit or other valuable consideration in connection with the referral of patients to any person, firm, corporation or association, or in connection with the furnishings of medical, surgical or dental care, diagnosis, treatment or service, on the sale, rental, furnishing or supplying of clinical laboratory supplies or services of any kind, drugs, medication, or medical supplies, or any other goods, services or supplies prescribed for medical diagnosis, care or treatment: *Provided*, That ownership of a financial interest in any firm, corporation or association which furnishes any kind of clinical laboratory or other services prescribed for medical, surgical, or dental diagnosis shall not be prohibited under this section where the referring practitioner affirmatively discloses to the patient in writing, the fact that such practitioner has a financial interest in such firm, corporation, or association.

Any person violating the provisions of this section is guilty of a misdemeanor. [1973 1st ex.s. c 26 § 1; 1965 ex.s. c 58 § 1. Prior: 1949 c 204 § 1; Rem. Supp. 1949 § 10185-14.]

**19.68.020 Deemed unprofessional conduct.** The acceptance directly or indirectly by any person so licensed of any rebate, refund, commission, unearned discount, or profit by means of a credit or other valuable consideration whether in the form of money or otherwise, as compensation for referring patients to any person, firm, corporation or association as set forth in RCW 19.68.030, constitutes unprofessional conduct. [1965 ex.s. c 58 § 2; 1949 c 204 § 2; Rem. Supp. 1949 § 10185-15.]

**19.68.030 License may be revoked or suspended.** The license of any person so licensed may be revoked or suspended if he has directly or indirectly requested, received or participated in the division, transference, assignment, rebate, splitting or refunding of a fee for, or has directly or indirectly requested, received or profited by means of a credit or other valuable consideration as a commission, discount or gratuity in connection with the furnishing of medical, surgical or dental care, diagnosis or treatment or service, including x-ray examination and treatment, or for or in connection with the sale, rental, supplying or furnishing of clinical laboratory service or supplies, x-ray services or supplies, inhalation therapy service or equipment, ambulance service, hospital or medical supplies, physiotherapy or other therapeutic service or equipment, artificial limbs, teeth or eyes, orthopedic or surgical appliances or supplies, optical appliances, supplies or equipment, devices for aid of hearing, drugs, medication or medical supplies or any other goods, services or supplies prescribed for medical diagnosis, care or treatment, except payment, not to exceed thirty-three and one-third percent of any fee received for x-ray examination, diagnosis or treatment, to any hospital furnishing facilities for such examination, diagnosis or treatment. [1965 ex.s. c 58 § 3. Prior: 1949 c 204 § 3; Rem. Supp. 1949 § 10185-16.]

**19.68.040 Declaration of intent.** It is the intent of this article [chapter], and this article [chapter] shall be so construed, that persons so licensed shall only be authorized by law to charge or receive compensation for professional services rendered if such services are actually rendered by the licensee and not otherwise: *Provided, however,* That it is not intended to prohibit two or more licensees who practice their profession as copartners to charge or collect compensation for any professional services by any member of the firm, or to prohibit a licensee who employs another licensee to charge or collect compensation for professional services rendered by the employee licensee. [1949 c 204 § 4; Rem. Supp. 1949 § 10185-17.]

### Chapter 19.70 RIFLES AND SHOTGUNS

#### Sections

- 19.70.010 Out-of-state purchasing authorized.  
19.70.020 Purchasing by nonresidents authorized.

*Firearms and dangerous weapons: Chapter 9.41 RCW.*

**19.70.010 Out-of-state purchasing authorized.** Residents of Washington may purchase rifles and shotguns in a state other than Washington: *Provided,* That such residents conform to the applicable provisions of the federal Gun Control Act of 1968, Title IV, Pub. L. 90-351 as administered by the United States secretary of the treasury: *And provided further,* That such residents are eligible to purchase or possess such weapons in Washington and in the state in which such purchase is made. [1970 ex.s. c 74 § 1.]

**19.70.020 Purchasing by nonresidents authorized.** Residents of a state other than Washington may purchase rifles and shotguns in Washington: *Provided,* That such residents conform to the applicable provisions of the federal Gun Control Act of 1968, Title IV, Pub. L. 90-351 as administered by the United States secretary of the treasury: *And provided further,* That such residents are eligible to purchase or possess such weapons in Washington and in the state in which such persons reside. [1970 ex.s. c 74 § 2.]

### Chapter 19.72 SURETYSHIP

#### Sections

- 19.72.001 Definitions.  
19.72.020 Individual sureties—Eligibility.  
19.72.030 Individual sureties—Number—Qualification.  
19.72.040 Individual sureties—Examination—Approval.  
19.72.060 Corporate surety.  
19.72.070 Subrogation of surety.  
19.72.080 Contribution among sureties.  
19.72.090 Default by surety—Indemnity.  
19.72.100 Notice to creditor to institute action.  
19.72.101 Failure of creditor to proceed—Discharge of surety.  
19.72.109 Release from official's, executor's, licensee's, etc., bond—Definitions.  
19.72.110 Release from official's, executor's, licensee's, etc., bond—Notice, service, proof.  
19.72.130 Release from official's, executor's, licensee's, etc., bond—Effective date—Failure to give new bond, effect.  
19.72.140 Suretyship—Raising issue as defendant.  
19.72.141 Suretyship—Order to exhaust principal's property.  
19.72.150 Heirs, etc., bound—Exception.  
19.72.160 Assets—Safekeeping agreements—Joint control of deposits.  
19.72.170 Bonds not to fail for want of form or substance.  
19.72.180 Successive recoveries on bond—Limitation.

*Bail and appearance bonds: Chapter 10.19 RCW.*

*Bond of executor or administrator: Chapter 11.28 RCW.*

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

*Corporate surety: Chapter 48.28 RCW.*

*Official bonds, in general: Chapter 42.08 RCW.*

**19.72.001 Definitions.** See RCW 19.72.109.

**19.72.020 Individual sureties—Eligibility.** Whenever any bond or recognizance is required, or permitted, by law to be made, given or filed, conditioned upon the doing or not doing of anything specified therein and to be signed by one or more persons as sureties, each of such sureties shall be a resident of this state; but no attorney at law, sheriff, clerk of any court of record, or other officer of such court, shall be permitted to become such surety. [1927 c 162 § 1; RRS § 958-1.]

**19.72.030 Individual sureties—Number—Qualification.** Each of such sureties shall have separate property worth the amount specified in the bond or recognizance, over and above all debts and liabilities, and exclusive of property exempt from execution, unless the other spouse joins in the execution of the bond, in which case they must have community property of such required value; but in case such bond or recognizance is given in any action or proceeding commenced or pending in any court the judge, or justice of the peace, as the case may be, on justification, may allow more than two sureties to justify, severally, in amounts less than the amount specified, if the whole justification is equivalent to that of two sufficient sureties. [1973 1st ex.s. c 154 § 22; 1927 c 162 § 2; RRS § 958-2.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**19.72.040 Individual sureties—Examination—Approval.** In case such bond or recognizance is given in any action or proceeding commenced or pending in any court, the judge or clerk of any court of record, or justice of the peace, as the case may be, or any party to the action or proceeding for the security or protection of which such bond or recognizance is made may, upon notice, require any of such sureties to attend before the judge, or justice of the peace at a time and place specified and to be examined under oath touching his qualifications both as to residence and property as such surety, in such manner as the judge, or justice of the peace, in his discretion, may think proper. If the party demanding the examination require it, the examination shall be reduced to writing and subscribed by the surety. If the judge, or justice of the peace, find the surety possesses the requisite qualifications and property, he shall endorse his allowance thereof on the bond or recognizance, and cause it to be filed as provided by law, otherwise it shall be of no effect. [1927 c 162 § 3; RRS § 958-3. Formerly RCW 19.72.040, 19.72.050.]

**19.72.060 Corporate surety.** See surety insurance: Chapter 48.28 RCW.

**19.72.070 Subrogation of surety.** When any defendant, surety in a judgment or special bail or replevin or surety in a delivery bond or replevin bond, or any person being surety in any bond whatever, has been or shall be compelled to pay any judgment or any part thereof, or shall make any payment which is applied upon such judgment by reason of such suretyship, or when any sheriff or other officer or other surety upon his official bond shall be compelled to pay any judgment or any part thereof by reason of any default of such officer, except for failing to pay over money collected, or for wasting property levied upon, the judgment shall not be discharged by such payment, but shall remain in force for the use of the bail, surety, officer or other person making such payment, and after the plaintiff is paid, so much of the judgment as remains unsatisfied may be prosecuted to execution for his use. [Code 1881 § 648; RRS § 978. Prior: 1877 p 134 § 651; 1869 p 151 § 588; 1854 p 211 § 430.]

**19.72.080 Contribution among sureties.** Any one of several judgment defendants, and any one of several replevin bail having paid and satisfied the plaintiff, shall have the remedy provided in RCW 19.72.070 against the codefendants and cosureties to collect of them the ratable proportion each is equitably bound to pay. [Code 1881 § 649; RRS § 979. Prior: 1877 p 135 § 652; 1869 p 151 § 589; 1854 p 211 § 431.]

**19.72.090 Default by surety—Indemnity.** No surety or his representative shall confess judgment or suffer judgment by default in any case where he is notified that there is a valid defense, if the principal will enter himself defendant to the action and tender to the surety or his representatives good security to indemnify him, to be approved by the court. [Code 1881 § 650; RRS § 980. Prior: 1877 p 135 § 653; 1869 p 151 § 590; 1854 p 211 § 432.]

**19.72.100 Notice to creditor to institute action.** Any person bound as surety upon any contract in writing for the payment of money or the performance of any act, when the right of action has accrued, may require by notice in writing the creditor or obligee forthwith to institute an action upon the contract. [Code 1881 § 644; RRS § 974. Prior: 1877 p 134 § 647; 1869 p 150 § 584; 1854 p 210 § 426. FORMER PART OF SECTION: Code 1881 § 645; RRS § 975, now codified as RCW 19.72.101.]

**19.72.101 Failure of creditor to proceed—Discharge of surety.** If the creditor or obligee shall not proceed within a reasonable time to bring his action upon such contract, and prosecute the same to judgment and execution, the surety shall be discharged from all liability thereon. [Code 1881 § 645; RRS § 975. Prior: 1877 p 134 § 648; 1869 p 150 § 585; 1854 p 210 § 427. Formerly RCW 19.72.100, part.]

**19.72.109 Release from official's, executor's, licensee's, etc., bond—Definitions.** Unless otherwise required by the context, words as used in RCW 19.72.110, and 19.72.130 shall mean:

(1) "Bond" shall mean and include any bond, undertaking or writing executed by a principal and surety, required by law from the principal as an official or employee of the state, or any county, municipal corporation or taxing district, or as guardian, executor, administrator, receiver or trustee, or as a licensee or permittee as a condition to the right to receive, hold or exercise any license, permit or franchise;

(2) "Surety" shall mean and include any person, firm or corporation that has executed as surety any bond. [1937 c 145 § 1; RRS § 9942. Formerly RCW 19.72.010.] [SLC-RO-17.]

**19.72.110 Release from official's, executor's, licensee's, etc., bond—Notice, service, proof.** Any surety upon any bond described in RCW 19.72.109 desiring to be released from subsequent liability and responsibility on any such bond shall serve upon the principal of such bond a written notice that on and after a certain date to

be fixed in the notice, which shall be not less than ten days from the date of the service of the notice, the surety will withdraw as surety from such bond and shall serve a copy of such notice upon the official with whom such bond is filed not less than ten days prior to the date fixed in the notice as the date of termination of liability. If such principal is an individual and resides within the state of Washington, or is a corporation doing business in the state of Washington, such notice shall be personally served upon such individual, or if the principal is a firm or a corporation, such notice shall be served personally upon any person upon whom personal service of summons may be made under the existing laws of the state of Washington. If the principal is an individual and is not a resident of the state of Washington, or cannot be found therein, or if the principal is a foreign corporation, such notice shall be mailed by registered mail to the last known address of such principal, if any, which fact shall be shown by affidavit filed with the notice of withdrawal as hereinafter provided, and a copy of such notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the county of the residence of the official with whom such bond is filed. The date of the last publication of notice shall be not less than twenty days from the date stated therein as the date upon which the surety will withdraw from the bond. Proof of such service or publication shall be made by affidavit and filed with the official with whom the bond is filed at least ten days before the date fixed in the notice of withdrawal. [1937 c 145 § 2; RRS § 9943. Formerly RCW 19.72.110 and 19.72.120.] [SLC-RO-17.]

**19.72.130 Release from official's, executor's, licensee's, etc., bond—Effective date—Failure to give new bond, effect.** On and after the date fixed in the notice as the termination date the surety shall be released from subsequent liability on such bond; and, unless before the date fixed in such notice as the termination date by the surety, a new bond shall be filed with sufficient and satisfactory surety as required by law under which the bond was originally furnished and filed, the office, position or trust in the case of a public office, guardian, executor, administrator, receiver or trustee shall become vacant and a successor shall be appointed as provided by law; and in case of a license, certificate, permit or franchise, the same shall become null and void: *Provided, however,* That no surety shall be released on the bond of any guardian, executor, administrator, receiver, or trustee until such fiduciary shall have furnished a new bond with surety approved by the court, or until his successor has been appointed and has qualified and taken over the fiduciary assets. Said notice of withdrawal shall be final and not subject to cancellation by said surety and said license, certificate, permit or franchise can only be continued upon filing a new bond as above provided. [1937 c 145 § 3; RRS § 9944.] [SLC-RO-17.]

**19.72.140 Suretyship—Raising issue as defendant.** When any action is brought against two or more defendants upon a contract, any one or more of the defendants being surety for the others, the surety may,

upon a written complaint to the court, cause the question of suretyship to be tried and determined upon the issues made by the parties at the trial of the cause, or at any time before or after the trial, or at a subsequent term, but such proceedings shall not affect the proceedings of the plaintiff. [Code 1881 § 646; RRS § 976. Prior: 1877 p 134 § 649; 1869 p 150 § 586; 1854 p 210 § 428. FORMER PART OF SECTION: Code 1881 § 647; RRS § 977, now codified as RCW 19.72.141.]

**19.72.141 Suretyship—Order to exhaust principal's property.** If the finding upon such issue be in favor of the surety, the court shall make an order directing the sheriff to levy the execution upon, and first exhaust the property of the principal before a levy shall be made upon the property of the surety, and the clerk shall indorse a memorandum of the order upon the execution. [Code 1881 § 647; RRS § 977. Prior: 1877 p 134 § 650; 1869 p 151 § 587; 1854 p 211 § 429. Formerly RCW 19.72.140, part.]

**19.72.150 Heirs, etc., bound—Exception.** The provisions of RCW 19.72.070 through 19.72.101, 19.72.140, 19.72.141 shall extend to heirs, executors, and administrators of deceased persons, but the provisions of RCW 19.72.101 shall not operate against persons under legal disabilities. [Code 1881 § 651; RRS § 981. Prior: 1877 p 135 § 654; 1869 p 151 § 591; 1854 p 211 § 433.]

**19.72.160 Assets—Safekeeping agreements—Joint control of deposits.** It shall be lawful for any party of whom a bond, undertaking or other obligation is required, to agree with his surety or sureties for the deposit of any or all moneys and assets for which he and his surety or sureties are or may be held responsible, with a bank, savings bank, savings and loan association, safe deposit or trust company, authorized by law to do business as such, or with other depository approved by the court or a judge thereof, if such deposit is otherwise proper, for the safekeeping thereof, and in such manner as to prevent the withdrawal of such money or assets or any part thereof, without the written consent of such surety or sureties, or an order of court, or a judge thereof made on such notice to such surety or sureties as such court or judge may direct: *Provided, however,* That such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of said bond. [1953 c 46 § 1.]

**19.72.170 Bonds not to fail for want of form or substance.** No bond required by law, and intended as such bond, shall be void for want of form or substance, recital, or condition; nor shall the principal or surety on such account be discharged, but all the parties thereto shall be held and bound to the full extent contemplated by the law requiring the same, to the amount specified in such bond. In all actions on such defective bond, the plaintiff may state its legal effect, in the same manner as though it were a perfect bond. [Code 1881 § 749; 1854 p 219 § 489; RRS § 777. Formerly RCW 10.19.120, part.] [SLC-RO-10.]

**19.72.180 Successive recoveries on bond—Limitation.** In the event of the breach of the condition of any bond described in RCW 19.72.109, successive recoveries may be made thereon by any of the obligees thereof: *Provided, however,* That the total amount of all such recoveries, whether by one or more of such obligees, shall not exceed, in the aggregate, the penal sum specified in such bond. [1959 c 113 § 1.]

### Chapter 19.76 BEVERAGE BOTTLES, ETC.—LABELING— REFILLING

#### Sections

- 19.76.100 Labels on bottles, etc.—Filing—Publication.  
19.76.110 Refilling bottles, etc.—Forbidden.  
19.76.120 Refilling bottles, etc.—Possession as evidence.

*Trademark registration: Chapter 19.77 RCW.*

**19.76.100 Labels on bottles, etc.—Filing—Publication.** All persons engaged in the manufacture, bottling or selling of ale, porter, lager beer, soda, mineral water, or other beverages in casks, kegs, bottles or boxes, with their names or other marks of ownership stamped or marked thereon, may file in the office of the secretary of state, and also in the office of the auditor of the county in which such articles are manufactured, bottled or sold, a description of names or marks so used by them, and cause the same to be printed for six successive weeks in a weekly newspaper, printed in the English language, in counties where no daily newspaper is printed or published; and in counties where a daily newspaper is printed and published, the same shall be published in a daily newspaper of general circulation, printed in the English language, six times a week for six successive weeks, in counties where such articles are manufactured, bottled or sold. [1897 c 38 § 1; RRS § 11546.]

*Alcoholic beverage control: Title 66 RCW.*

*Labeling of spirits, etc.: RCW 66.28.100–66.28.120.*

**19.76.110 Refilling bottles, etc.—Forbidden.** It is hereby declared to be unlawful for any person or persons hereafter, without the written consent of the owner or owners thereof, to fill with ale, porter, lager beer or soda, mineral water or other beverages, for sale or to be furnished to customers, any such casks, barrels, kegs, bottles or boxes so marked or stamped, or to sell, dispose of, buy or traffic in, or wantonly destroy any such cask, barrel, keg, bottle or box so marked, stamped, by the owner or owners thereof, after such owner or owners shall have complied with the provisions of RCW 19.76.100. Any person or persons who shall violate any of the provisions of RCW 19.76.100 through 19.76.120 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined five dollars for each and every cask, barrel, keg, or box, and fifty cents for each and every bottle so by him, her or them filled, bought, sold, used, trafficked in or wantonly destroyed, together with costs of suit for first offense, and ten dollars for each and every cask, barrel, keg and box and one dollar for each and every bottle so filled, bought, sold, used, trafficked

in, or wantonly destroyed, together with the costs of suit for each subsequent offense. [1897 c 38 § 2; RRS § 11547.]

*Crimes relating to brands and marks: Chapter 9.16 RCW.*

**19.76.120 Refilling bottles, etc.—Possession as evidence.** The using by any person other than the rightful owner thereof, without such written permission, of any such cask, barrel, keg, bottle or box, for the sale therein of ale, porter, lager beer, soda, mineral waters or other beverages, or to be furnished to customers, or the buying, selling or trafficking in any such barrel, keg, bottle or box, by any person other than the owner, without such written permission, or the fact that any junk dealer or dealers in casks, barrels, kegs, bottles or boxes, shall have in his or her possession any such cask, barrel, keg, bottle or box so marked or stamped and registered as aforesaid, without such written permission, shall and is hereby declared to be prima facie evidence that such use, buying, selling, trafficking in or possession is unlawful within the meaning of RCW 19.76.100 through 19.76.120. [1897 c 38 § 3; RRS § 11548.]

### Chapter 19.77 TRADEMARK REGISTRATION

#### Sections

- 19.77.010 Definitions.  
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*Crimes relating to trademarks: Chapter 9.16 RCW.*

**19.77.010 Definitions.** As used in this chapter:

- (1) "Applicant" means the person filing an application for registration of a trademark under this chapter, his legal representatives, successors, or assigns of record with the secretary of state;
- (2) "Person" means any individual, firm, partnership, corporation, association, union, or other organization;
- (3) "Registrant" means the person to whom the registration of a trademark under this chapter is issued, his legal representatives, successors, or assigns of record with the secretary of state;
- (4) "Trademark" means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others, and

further includes without limitation a mark, name, symbol, title, designation, slogan, character name, and distinctive feature of radio or other advertising used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others;

(5) A trademark shall be deemed to be "used" in this state when it is placed in any manner on the goods or their containers, or on tabs or labels affixed thereto, or displayed in connection with such goods, and such goods are sold or otherwise distributed in this state, or when it is used or displayed in the sale or advertising of services rendered in this state. [1955 c 211 § 1.]

**Effective date**—1955 c 211: "This act shall be in force and take effect on September 1, 1955." [1955 c 211 § 19.]

**19.77.020 Registration of certain trademarks prohibited.** A trademark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(1) Consists of or comprises immoral, deceptive, or scandalous matter; or

(2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute; or

(3) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or

(4) Consists of or comprises the name, portrait, or signature identifying a particular living individual, except with his written consent; or

(5) Consists of a mark which,

(a) when applied to the goods or services of the applicant is merely descriptive or deceptively misdescriptive of them, or

(b) when applied to the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or

(c) is primarily merely a surname; or

(6) Consists of or comprises a trademark which so resembles a trademark registered in this state, or a trademark or trade name previously used in this state by another and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive. [1955 c 211 § 2.]

**19.77.030 Application for registration.** Subject to the limitations set forth in this chapter, any person who has adopted and is using a trademark in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that trademark setting forth, but not limited to, the following information:

(1) The name and business address of the applicant, and, if the applicant is a corporation, its state of incorporation;

(2) The particular goods or services in connection with which the trademark is used and the class in which such goods or services fall;

(3) The manner in which the trademark is placed on or affixed to the goods or containers, or displayed in connection with such goods, or used in connection with the sale or advertising of the services;

(4) The date when the trademark was first used with each of such goods or services anywhere and the date when it was first used with each of such goods or services in this state by the applicant or his predecessor in business;

(5) A statement that the trademark is presently in use in this state by the applicant; and

(6) A statement that the applicant believes himself to be the owner of the trademark and believes that no other person has the right to use such trademark in connection with the same or similar goods or services in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor.

A single application for registration of a trademark may specify all goods or services in a single class for which the trademark is actually being used, but may not specify goods or services in different classes.

The application shall be signed and verified by the applicant individual, or by a member of the applicant firm, or by an officer of the applicant corporation, association, union or other organization.

The application shall be accompanied by three specimens or facsimiles of the trademark for at least one of the goods or services for which its registration is requested, and a filing fee of ten dollars payable to the secretary of state. [1955 c 211 § 3.]

**19.77.040 Certificate of registration—Issuance—Contents—Admissibility in evidence.** Upon compliance by the applicant with the requirements of this chapter, the secretary of state shall issue a certificate of registration and deliver it to the applicant. The certificate of registration shall be issued under the signature of the secretary of state and the seal of the state, and it shall show the registrant's name and business address and, if the registrant is a corporation, its state of incorporation, the date claimed for the first use of the trademark anywhere, the date claimed for the first use of the trademark in this state, the particular goods or services for which the trademark is used, the class in which such goods and services fall, a reproduction of the trademark, the registration date and the term of the registration.

Any certificate of registration issued by the secretary of state under the provisions hereof or a copy thereof duly certified by the secretary of state shall be admissible in evidence as competent and sufficient proof of the registration of such trademark in any action or judicial proceeding in any court of this state. [1955 c 211 § 4.]

**19.77.050 Duration of certificate—Renewal.** Registration of a trademark hereunder shall be effective for a term of ten years from the date of registration. Upon application filed within six months prior to the expiration of such term, on a form to be furnished by the secretary of state requiring all the allegations of an application for original registration, the registration may



be renewed for successive terms of ten years as to the goods or services for which the trademark is still in use in this state. A renewal fee of ten dollars, payable to the secretary of state, shall accompany each application for renewal of the registration.

The secretary of state shall notify registrants of trademarks hereunder or their agents for service of record with the secretary of state of the necessity of renewal within the year, but not less than six months, next preceding the expiration of the unexpired original or renewed term by writing to the last known address of the registrants or their agents according to the files of the secretary of state.

Any registration in force on September 1, 1955 shall expire five years from the date of the registration or one year after September 1, 1955, whichever date is later, and may be renewed as provided for renewing registrations under this chapter. A separate renewal application is required for goods in each class.

The secretary of state shall, within six months after September 1, 1955, notify all registrants of trademarks under previous acts of the date of expiration of their registrations by writing to the last known address of the registrants according to the files of the secretary of state, unless such registrations have been renewed in accordance with the provisions of this chapter. [1955 c 211 § 5.]

**19.77.060 Assignment of trademark, registration, or application.** Any trademark and its registration or application for registration hereunder shall be assignable with the good will of the business in which the trademark is used, or with that part of the good will of the business connected with the use of and symbolized by the trademark. An assignment by an instrument in writing duly executed and acknowledged, or the designation of a legal representative, successor, or agent for service shall be recorded by the secretary of state on request when accompanied by a fee of five dollars payable to the secretary of state. On request, upon recording of the assignment and payment of a further fee of three dollars, the secretary of state shall issue in the name of the assignee a new certificate for the remainder of the unexpired original or renewal term of the registration. An assignment of any registration or application for registration under this chapter shall be void as against any subsequent purchaser for a valuable consideration without notice, unless it is recorded with the secretary of state within three months after the date thereof or prior to such subsequent purchase. [1955 c 211 § 6.]

**19.77.070 Secretary of state to keep records.** The secretary of state shall keep for public examination a record of all trademarks registered or renewed under this chapter, and the records specified in RCW 19.77.060. [1955 c 211 § 7.]

**19.77.080 Secretary of state must cancel certain registrations.** The secretary of state shall cancel from the register:

(1) After one year from September 1, 1955, all registrations under prior acts which are more than five years old and not renewed in accordance with this chapter;

(2) Any registration concerning which the secretary of state shall receive a voluntary written request for cancellation thereof from the registrant;

(3) All expired registrations not renewed under this chapter;

(4) Any registration concerning which a final decree of a court of competent jurisdiction, upon filing of a certified copy of such decree with the secretary of state, shall adjudge:

(a) That the registered trademark has been abandoned; or

(b) That the registrant is not the owner of the trademark; or

(c) That the registration was granted improperly; or

(d) That the registration was obtained fraudulently; or

(e) That the registration be canceled on any ground. [1955 c 211 § 8.]

**19.77.090 Actions relating to registration—Service on secretary of state.** The secretary of state shall be the agent for service of process in any action relating to the registration of any registrant who is at the time of such service a nonresident or a foreign firm, corporation, association, union, or other organization without a resident of this state designated as the registrant's agent for service of record with the secretary of state, or who cannot be found in this state, and service of process, pleadings and papers in such action made upon the secretary of state shall be held as due and sufficient process upon the registrant. [1955 c 211 § 9.]

**19.77.100 Cancellation at instance of person damaged.** Any person who believes he will be damaged by a registration of a trademark by the secretary of state may request cancellation of such registration by filing with the secretary of state in duplicate a verified petition setting forth the facts in support of such request, accompanied by a fee of twenty-five dollars payable to the secretary of state. To each copy of said petition for cancellation there shall be attached a copy of each of the trademarks or trade names, or the personal name, portrait, or signature, of the petitioner, or other exhibits of like character relied on in the petition. Thereafter the secretary of state shall mail to the registrant or his agent for service of record with the secretary of state a copy of said petition, addressed to the last known address of the registrant or such agent according to the files of the secretary of state, accompanied by a notice that said registrant may, within twenty days if the registrant is a resident of the state of Washington, or within sixty days if the registrant is a nonresident of the state of Washington, file in duplicate a verified answer to said petition. Thereafter the secretary of state shall forward a copy of said answer to said petitioner, accompanied by a notice that said petitioner may, within a specified time, not less than twenty days, file in duplicate a verified statement as to any further facts which are pertinent to issues raised by said answer, and the secretary of state



shall in like manner forward a copy thereof to said registrant or such agent. The secretary of state shall then fix a hearing date not less than thirty days from the last day that the petitioner may file a statement of further facts. Written notice of such hearing shall be served on the parties by the secretary of state not less than fifteen days before the hearing in the same manner as the petition and answer were forwarded. Additional relevant testimony or other evidence may be introduced by the parties, and the secretary of state may subpoena such witnesses as he deems necessary. The parties shall have the right to be represented by counsel. On conclusion of the hearing the secretary of state shall grant or deny the petitioner's request for cancellation of the registration as the facts shall warrant and shall send a copy of his decision to the petitioner and to the registrant or such agent. If the secretary of state finds that the trademark should not have been registered, or is in violation of the common law rights of the petitioner, or if the secretary of state receives no answer from the registrant within the time limits specified hereinabove, he shall cancel said registration from the register, unless a petition for review of such decision is filed as provided hereinafter.

Either the petitioner or the registrant may, within sixty days after mailing of the copy of the decision by the secretary of state, file in the superior court of the state of Washington for Thurston county, and mail to the secretary of state and the other party or such agent at his last known address according to the files of the secretary of state, a petition for review of the decision of the secretary of state. The court shall review such decision on the basis of the record before the secretary of state for the purpose of determining the reasonableness and lawfulness of such decision and, subject to the right of appeal to the supreme court or the court of appeals of the state, the decree of the superior court shall be binding upon the secretary of state with respect to the granting or denial of the petitioner's request for cancellation. In any such petition for review the secretary of state shall be a necessary party, and the petitioner for cancellation and the registrant shall be proper parties. [1971 c 81 § 65; 1955 c 211 § 10.]

**19.77.110 Classification of goods.** The following general classes of goods are established for the convenient administration of this chapter, but do not limit or extend the applicant's or registrant's rights:

- (1) Raw or partly prepared materials.
- (2) Receptacles.
- (3) Baggage, animal equipment, portfolios, and pocketbooks.
- (4) Abrasives and polishing materials.
- (5) Adhesives.
- (6) Chemicals and chemical compositions.
- (7) Cordage.
- (8) Smokers' articles, not including tobacco products.
- (9) Explosives, firearms, equipment and projectiles.
- (10) Fertilizers.
- (11) Inks and inking materials.
- (12) Construction materials.
- (13) Hardware and plumbing and steam fitting supplies.

- (14) Metals and metal castings and forgings.
- (15) Oils and greases.
- (16) Paints and painters' materials.
- (17) Tobacco products.
- (18) Medicines and pharmaceutical preparations.
- (19) Vehicles.
- (20) Linoleum and oiled cloth.
- (21) Electrical apparatus, machines, and supplies.
- (22) Games, toys and sporting goods.
- (23) Cutlery, machinery, and tools and parts thereof.
- (24) Laundry appliances and machines.
- (25) Locks and safes.
- (26) Measuring and scientific appliances.
- (27) Horological instruments.
- (28) Jewelry and precious metal ware.
- (29) Brooms, brushes, and dusters.
- (30) Crockery, earthenware, and porcelain.
- (31) Filters and refrigerators.
- (32) Furniture and upholstery.
- (33) Glassware.
- (34) Heating, lighting and ventilating apparatus.
- (35) Belting, hose, machinery packing and nonmetallic tires.
- (36) Musical instruments and supplies.
- (37) Paper and stationery.
- (38) Prints and publications.
- (39) Clothing.
- (40) Fancy goods, furnishings and notions.
- (41) Canes, parasols and umbrellas.
- (42) Knitted, netted and textile fabrics, and substitutes therefor.
- (43) Thread and yarn.
- (44) Dental, medical and surgical appliances.
- (45) Soft drinks and carbonated waters.
- (46) Foods and ingredients of foods.
- (47) Wines.
- (48) Malt beverages and liquors.
- (49) Distilled alcoholic liquors.
- (50) Merchandise not otherwise classified.
- (51) Cosmetics and toilet preparations.
- (52) Detergents and soaps. [1955 c 211 § 11.]

**19.77.120 Classification of services.** The following general classes of services are established for the convenient administration of this chapter, but do not limit or extend the applicant's or registrant's rights:

- (100) Miscellaneous.
- (101) Advertising and business.
- (102) Insurance and financial.
- (103) Construction and repair.
- (104) Communication.
- (105) Transportation and storage.
- (106) Material treatment.
- (107) Education and entertainment. [1955 c 211 § 12.]

**19.77.130 Fraudulent registration.** Any person who shall for himself, or on behalf of any other person, procure the registration of any trademark by the secretary of state under the provisions of this chapter, by knowingly making any false or fraudulent representation or declaration, or by any other fraudulent means, shall be

liable to pay all damages sustained in consequence of such registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction. [1955 c 211 § 13.]

**19.77.140 Trademark imitation.** Subject to the provisions of RCW 19.77.900 any person who shall:

(1) Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a trademark registered under this chapter in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services; or

(2) Reproduce, counterfeit, copy or colorably imitate any such trademark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution of goods or services in this state; shall be liable to a civil action by the registrant for any or all of the remedies provided in RCW 19.77.150, except that under subdivision (2) of this section the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such use is intended to cause confusion or mistake or to deceive. [1955 c 211 § 14.]

**19.77.150 Remedies of registrants.** Any registrant may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or imitations of a trademark registered under this chapter, and any court of competent jurisdiction may grant injunction to restrain such manufacture, use, display, or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such registrant all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display, or sale; and such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the registrant, to be destroyed.

The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state. [1955 c 211 § 15.]

**19.77.900 Common law rights preserved.** Nothing herein shall adversely affect the rights or the enforcement of rights in trademarks acquired in good faith at any time at common law. [1955 c 211 § 16.]

**19.77.910 Saving—1955 c 211.** As to any pending suit, proceeding or appeal, and for that purpose only, the repeal of prior acts shall be deemed not to be effective until final determination. [1955 c 211 § 17.]

**19.77.920 Severability—1955 c 211.** If any provision of this chapter is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions. [1955 c 211 § 20.]

## Chapter 19.80 TRADE NAMES

### Sections

19.80.010	Registration required.
19.80.020	Exemptions.
19.80.030	Change of ownership—New certificate.
19.80.040	Failure to file—Presumption of fraud.

**19.80.010 Registration required.** No person or persons shall hereafter carry on, conduct or transact business in this state under any assumed name or under any designation, name or style, corporate or otherwise, other than the true and real name or names of the person or persons conducting such business or having an interest therein, unless such person, or all of such persons, conducting said business, or having an interest therein, shall file a certificate in the office of the county clerk of the county or counties in which said business is to be conducted, which certificate shall set forth the designation, name or style under which said business is to be conducted, and the true and real name or names of the party or parties conducting, or intending to conduct, the same, or having an interest therein, together with the post office address or addresses of said person or persons. Such certificate shall be executed and acknowledged by the party or parties conducting, or intending to conduct, said business, or having an interest therein, before an officer authorized to take acknowledgment of deeds. [1907 c 145 § 1; RRS § 9976.]

**Transitional:** "Any person or persons now conducting any business under such assumed name, or under any designation, name or style other than the true and real name or names of all of the parties having an interest therein, shall file a certificate as provided for in RCW 19.80.010 within thirty days after this chapter shall take effect, and persons hereafter conducting, or intending to conduct, any business, as set forth in RCW 19.80.010, shall, before commencing business, file such certificate in the manner hereinbefore prescribed." [1907 c 145 § 2.]

**19.80.020 Exemptions.** This chapter shall in no way affect or apply to any corporation duly organized under the laws of this state, or to any corporation organized under the laws of another state and lawfully doing business in this state; nor shall this chapter be deemed or construed to prevent the lawful use of a partnership designation, name or style: *Provided*, That such partnership designation, name or style shall include the true and real name or names of all of the parties conducting such business or having an interest therein; nor shall this chapter affect or apply to any limited partnership now legally organized or to be organized within this state. [1907 c 145 § 4; RRS § 9979.]

**19.80.030 Change of ownership—New certificate.** Whenever any business is being conducted under any assumed name, or under any designation, name or style other [than] the true and real name or names of all of the parties having an interest therein, and there shall be any change in the ownership or interest therein, then the party or parties who are to conduct such business, or have an interest therein after such change in interest, shall file a certificate as provided in RCW 19.80.010, before conducting or transacting any business whatsoever. [1907 c 145 § 3; RRS § 9978.]

**19.80.040 Failure to file—Presumption of fraud.** No person or persons carrying on, conducting or transacting business as aforesaid, or having an interest therein, shall hereafter be entitled to maintain any suit in any of the courts of this state without alleging and proving that such person or persons have filed a certificate as provided for in RCW 19.80.010, and failure to file such certificate shall be prima facie evidence of fraud in securing credit. [1907 c 145 § 5; RRS § 9980. Formerly RCW 19.80.040 and 19.80.050.]

### Chapter 19.83 TRADING STAMP LICENSES

#### Sections

- 19.83.010 License required to use or furnish trading stamps.
- 19.83.020 Issuance of license—Fee.
- 19.83.030 Furnishing or selling stamps geographically limited.
- 19.83.040 Coupons of manufacturer contained in original packages exempt—Exceptions.
- 19.83.050 Penalty.

*Trading stamps and premiums, general provision: Chapter 19.84 RCW.*

**19.83.010 License required to use or furnish trading stamps.** Every person who uses, or furnishes, or sells to any other person for use, in, with, or for the sale of any goods, any trading stamps, coupons, tickets, certificates, cards or other similar devices which entitle the purchaser to procure any goods free of charge or for less than the retail market price thereof, upon the production of any number of such trading stamps, coupons, tickets, certificates, cards, or other similar devices, shall before so furnishing, selling, or using the same obtain a separate license from the auditor of each county wherein such furnishing or selling or using shall take place for each and every store or place of business in that county, owned or conducted by such person from which such furnishing or selling, or in which such using shall take place. [1913 c 134 § 1; RRS § 8359. Formerly RCW 36.91.010.]

**19.83.020 Issuance of license—Fee.** In order to obtain such license the person applying therefor shall pay to the county treasurer of the county for which the license is sought the sum of six thousand dollars, and upon such payment being made to the county treasurer he shall issue his receipt therefor which shall be presented to the auditor of the county, who shall upon the presentation thereof issue to the person making such payment a license to furnish or sell, or a license to use, for one year, trading stamps, coupons, tickets, certificates, cards, or other similar devices. Such license shall contain the name of the licensee, the date of its issue, the date of its expiration, the city or town in which and the location at which the same shall be used, and the license shall be used at no place other than that mentioned therein. [1913 c 134 § 2; RRS § 8360. Formerly RCW 36.91.020.]

**19.83.030 Furnishing or selling stamps geographically limited.** No person shall furnish or sell to another

for use, in, with, or for the sale of any goods, any trading stamps, coupons, tickets, certificates, cards, or other similar devices to be used in any county, city or town in this state other than that in which such furnishing or selling shall take place. [1957 c 221 § 2. Prior: 1939 c 31 § 1, part; 1913 c 134 § 3, part; RRS § 8361, part. Formerly RCW 36.91.030.]

**19.83.040 Coupons of manufacturer contained in original packages exempt—Exceptions.** Nothing in this chapter, or in any other statute or ordinance of this state, shall apply to the issuance and direct redemption by a manufacturer of a premium coupon, certificate, or similar device; or prevent him from issuing and directly redeeming such premium coupon, certificate, or similar device, which, however, shall not be issued, circulated or distributed by retail vendors except when contained in or attached to an original package. The term "manufacturer," as used in this section means any vendor of an article of merchandise which is put up by or for him in an original package and which is sold under his or its trade name, brand or mark: *Provided*, That no premium coupon, certificate or similar device shall be issued in connection with the sale of poultry, or milk and milk products. [1972 ex.s. c 104 § 1; 1957 c 221 § 3. Prior: 1939 c 31 § 1, part; 1913 c 134 § 3, part; RRS § 8361, part. Formerly RCW 36.91.040.]

**19.83.050 Penalty.** Any person violating any of the provisions of this chapter shall be guilty of a gross misdemeanor. [1913 c 134 § 4; RRS § 8362. Formerly RCW 36.91.050.]

### Chapter 19.84 TRADING STAMPS AND PREMIUMS

#### Sections

- 19.84.010 Redeemable cash value to be printed on face.
- 19.84.020 Must redeem at cash value.
- 19.84.030 Distributor liable.
- 19.84.040 Criminal penalty.

*Trading stamp licenses: Chapter 19.83 RCW.*

**19.84.010 Redeemable cash value to be printed on face.** No person shall sell or issue any stamps, trading stamp, cash discount stamp, check, ticket, coupon or other similar device, which will entitle the holder thereof, on presentation thereof, either singly or in definite number, to receive, either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise, unless each of said stamps, trading stamps, cash discount stamps, checks, tickets, coupons or other similar devices shall have legibly printed or written upon the face thereof the redeemable value thereof in cents. [1907 c 253 § 1; RRS § 5837.]

**19.84.020 Must redeem at cash value.** Any person who shall sell or issue to any person engaged in any trade, business or profession, any stamp, trading stamp, cash discount stamp, check, ticket, coupon, or other similar device which will entitle the holder thereof, on presentation thereof either singly or in definite number, to receive either directly from the vendor or indirectly

through any other person, money or goods, wares or merchandise, shall, upon presentation, redeem the same either in goods, wares or merchandise, or in cash, good and lawful money of the United States, at the option of the holder thereof, and any number of such stamps, trading stamps, cash discount stamps, checks, tickets, coupons, or other similar devices shall be redeemed as hereinbefore set forth, at the value in cents printed upon the face thereof, and it shall not be necessary for the holder thereof to have any stipulated number of the same before demand for redemption may be made, but they shall be redeemed in any number, when presented, at the value in cents printed upon the face thereof, as hereinbefore provided. [1907 c 253 § 2; RRS § 5838.]

**19.84.030 Distributor liable.** Any person engaged in any trade, business or profession who shall distribute, deliver or present to any person dealing with him, in consideration of any article or thing purchased, any stamp, trading stamp, cash discount stamp, check, ticket, coupon or other similar device, which will entitle the holder thereof, on presentation thereof, either singly or in definite number, to receive, either directly from the person issuing or selling the same, as set forth in RCW 19.84.020, or indirectly through any other person, shall, upon the refusal or failure of the said person issuing or selling same to redeem the same, as set forth in RCW 19.84.020, be liable to the holder thereof for the face value thereof, and shall upon presentation redeem the same, either in goods, wares or merchandise, or in cash, good and lawful money of the United States of America, at the option of the holder thereof, and in such case any number of such stamps, trading stamps, cash discount stamps, checks, tickets, coupons or other similar devices, shall be redeemed as hereinbefore set forth, at the value in cents printed upon the face thereof, and it shall not be necessary for the holder thereof to have any stipulated number of the same before demand for redemption may be made, but they shall be redeemed in any number, when presented, at the value in cents printed upon the face thereof, as hereinbefore provided. [1907 c 253 § 3; RRS § 5839.]

**19.84.040 Criminal penalty.** Any person, firm or corporation who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense. [1907 c 253 § 4; RRS § 5840.]

### Chapter 19.86

## UNFAIR BUSINESS PRACTICES—CONSUMER PROTECTION

### Sections

19.86.010	Definitions.
19.86.020	Unfair competition, practices, declared unlawful.
19.86.030	Contracts, combinations, conspiracies in restraint of trade declared unlawful.
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19.86.080	Attorney general may restrain prohibited acts—Costs—Restoration of property.
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*Unfair motor vehicle business practices: Chapter 46.70 RCW.*

*Usurious contracts, application of consumer protection law to: RCW 19.52.036.*

### 19.86.010 Definitions. As used in this chapter:

(1) "Person" shall include, where applicable, natural persons, corporations, trusts, unincorporated associations and partnerships.

(2) "Trade" and "commerce" shall include the sale of assets or services, and any commerce directly or indirectly affecting the people of the state of Washington.

(3) "Assets" shall include any property, tangible or intangible, real, personal, or mixed, and wherever situate, and any other thing of value. [1961 c 216 § 1.]

**19.86.020 Unfair competition, practices, declared unlawful.** Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful. [1961 c 216 § 2.]

*Hearing aid dispensing, advertising, etc.—Application: RCW 18.35.180.*

**19.86.030 Contracts, combinations, conspiracies in restraint of trade declared unlawful.** Every contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce is hereby declared unlawful. [1961 c 216 § 3.]

*Monopolies and trusts prohibited: State Constitution Art. 12 § 22.*

**19.86.040 Monopolies and attempted monopolies declared unlawful.** It shall be unlawful for any person to monopolize, or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of trade or commerce. [1961 c 216 § 4.]

**19.86.050 Transactions and agreements not to use or deal in commodities or services of competitor declared unlawful when lessens competition.** It shall be unlawful for any person to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, or services, whether patented or unpatented, for use, consumption, enjoyment, or resale, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodity or services of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for such sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce. [1961 c 216 § 5.]

**19.86.060 Acquisition of corporate stock by another corporation to lessen competition declared unlawful—Exceptions—Judicial order to divest.** It shall be unlawful for any corporation to acquire, directly or indirectly, the whole or any part of the stock or assets of another corporation where the effect of such acquisition may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

In addition to any other remedy provided by this chapter, the superior court may order any corporation to divest itself of the stock or assets held contrary to this section, in the manner and within the time fixed by said order. [1961 c 216 § 6.]

**19.86.070 Labor not an article of commerce—Chapter not to affect mutual, nonprofit organizations.** The labor of a human being is not a commodity or article of commerce. Nothing contained in this chapter shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof. [1961 c 216 § 7.]

*Labor regulations: Title 49 RCW.*

**19.86.080 Attorney general may restrain prohibited acts—Costs—Restoration of property.** The attorney general may bring an action in the name of the state against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful; and the prevailing party may, in the discretion of the court, recover the costs of said action including a reasonable attorney's fee.

The court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any act herein prohibited or declared to be unlawful. [1970 ex.s. c 26 § 1; 1961 c 216 § 8.]

**19.86.090 Civil action for damages—Treble damages authorized—Action by governmental entities.** Any person who is injured in his business or property by a violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, or any person so injured because he refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, may bring a civil action in the superior court to enjoin further violations, to recover the actual damages sustained by him, or both, together with the costs of the suit, including a reasonable attorney's fee, and the court may in its discretion, increase the award of damages to an amount not to exceed three times the actual damages sustained: *Provided*, That such increased damage award for violation of RCW 19.86.020 may not exceed one thousand dollars. For the purpose of this section "person" shall include the counties, municipalities, and all political subdivisions of this state.

Whenever the state of Washington is injured by reason of a violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, it may sue therefor in the superior court to recover the actual damages sustained by it and to recover the costs of the suit including a reasonable attorney's fee. [1970 ex.s. c 26 § 2; 1961 c 216 § 9.]

**19.86.100 Assurance of discontinuance of prohibited act—Approval of court—Not considered admission.** In the enforcement of this chapter, the attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston county.

Such assurance of discontinuance shall not be considered an admission of a violation for any purpose; however, proof of failure to comply with the assurance of discontinuance shall be prima facie evidence of a violation of this chapter. [1970 ex.s. c 26 § 3; 1961 c 216 § 10.]

**19.86.110 Demand to produce documentary materials for inspection—Contents—Service—Unauthorized disclosure—Return—Modification, vacation—Use—Penalty.** (1) Whenever the attorney general believes that any person may be in possession, custody, or control of any original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate, which he believes to be relevant to the subject matter of an investigation of a possible violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, he may, prior to the institution of a civil proceeding thereon, execute in writing and cause to be served upon such a person, a civil investigative demand requiring such person to produce such documentary material and permit inspection and copying: *Provided*, That this section shall not be applicable to criminal prosecutions.

(2) Each such demand shall:

(a) State the statute and section or sections thereof, the alleged violation of which is under investigation, and the general subject matter of the investigation;

(b) Describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demanded;

(c) Prescribe a return date within which the documentary material is to be produced; and

(d) Identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

(3) No such demand shall:

(a) Contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this state; or

(b) Require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state.

(4) Service of any such demand may be made by:

(a) Delivering a duly executed copy thereof to the person to be served, or, if such person is not a natural person, to any officer of the person to be served; or

(b) Delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(c) Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this state, or, if said person has no place of business in this state, to his principal office or place of business.

(5) Documentary material demanded pursuant to the provisions of this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the attorney general.

(6) No documentary material produced pursuant to a demand, or copies thereof, shall, unless otherwise ordered by a superior court for good cause shown, be produced for inspection or copying by, nor shall the contents thereof be disclosed to, other than an authorized

employee of the attorney general, without the consent of the person who produced such material: *Provided*, That, under such reasonable terms and conditions as the attorney general shall prescribe, the copies of such documentary material shall be available for inspection and copying by the person who produced such material or any duly authorized representative of such person. The attorney general or any assistant attorney general may use such copies of documentary material as he determines necessary in the enforcement of this chapter, including presentation before any court: *Provided*, That any such material which contains trade secrets shall not be presented except with the approval of the court in which action is pending after adequate notice to the person furnishing such material.

(7) At any time before the return date specified in the demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside a demand issued pursuant to subsection (1), stating good cause, may be filed in the superior court for Thurston county, or in such other county where the parties reside. A petition, by the person on whom the demand is served, stating good cause, to require the attorney general or any person to perform any duty imposed by the provisions of this section, and all other petitions in connection with a demand, may be filed in the superior court for Thurston county, or in the county where the parties reside.

(8) Whenever any person fails to comply with any civil investigative demand for documentary material duly served upon him under this section, or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the attorney general may file, in the trial court of general jurisdiction of the county in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one county such petition shall be filed in the county in which such person maintains his principal place of business, or in such other county as may be agreed upon by the parties to such petition. Whenever any petition is filed in the trial court of general jurisdiction of any county under this section, such court shall have jurisdiction to hear and determine the matter so presented and to enter such order or orders as may be required to carry into effect the provisions of this section. Disobedience of any order entered under this section by any court shall be punished as a contempt thereof. [1970 ex.s. c 26 § 4; 1961 c 216 § 11.]

**19.86.120 Limitation of actions—Tolling.** Any action to enforce a claim for damages under RCW 19.86.090 shall be forever barred unless commenced within four years after the cause of action accrues: *Provided*, That whenever any action is brought by the attorney general for a violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, except actions for the recovery of a civil penalty for violation of

an injunction or actions under RCW 19.86.090, the running of the foregoing statute of limitations, with respect to every private right of action for damages under RCW 19.86.090 which is based in whole or part on any matter complained of in said action by the attorney general, shall be suspended during the pendency thereof. [1970 ex.s. c 26 § 5; 1961 c 216 § 12.]

*Action to enforce claim for civil damages under chapter 19.86 RCW must be commenced within six years. Unfair motor vehicles business practices act: RCW 46.70.220.*

*Limitation of actions: Chapter 4.16 RCW.*

**19.86.130 Final judgment to restrain is prima facie evidence in civil action—Exceptions.** A final judgment or decree rendered in any action brought under RCW 19.86.080 by the state of Washington to the effect that a defendant has violated RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060 shall be prima facie evidence against such defendant in any action brought by any party against such defendant under RCW 19.86.090 as to all matters which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, That this section shall not apply to consent judgments or decrees where the court makes no finding of illegality. [1970 ex.s. c 26 § 6; 1961 c 216 § 13.]

**19.86.140 Civil penalties.** Every person who shall violate RCW 19.86.030 or 19.86.040 or the terms of any injunction issued as in this chapter provided, shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars.

Every person who violates RCW 19.86.020 shall forfeit and pay a civil penalty of not more than two thousand dollars for each violation: *Provided*, That nothing in this paragraph shall apply to any radio or television broadcasting station which broadcasts, or to any publisher, printer or distributor of any newspaper, magazine, billboard or other advertising medium who publishes, prints or distributes, advertising in good faith without knowledge of its false, deceptive or misleading character.

For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties.

With respect to violations of RCW 19.86.030 and 19.86.040, the attorney general, acting in the name of the state, may seek recovery of such penalties in a civil action. [1970 ex.s. c 26 § 7; 1961 c 216 § 14.]

**19.86.150 Dissolution, forfeiture of corporate franchise for violations.** Upon petition by the attorney general, the court may, in its discretion, order the dissolution, or suspension or forfeiture of franchise, of any corporation which shall violate RCW 19.86.030 or 19.86.040 or the terms of any injunction issued as in this chapter provided. [1961 c 216 § 15.]

**19.86.160 Personal service of process outside state.** Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this

chapter which has had the impact in this state which this chapter reprehends. Such persons shall be deemed to have thereby submitted themselves to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185. [1961 c 216 § 16.]

**19.86.170 Exempted actions or transactions—Stipulated penalties and remedies are exclusive.** Nothing in this chapter shall apply to actions or transactions otherwise permitted, prohibited or regulated under laws administered by the insurance commissioner of this state, the Washington utilities and transportation commission, the federal power commission or actions or transactions permitted by any other regulatory body or officer acting under statutory authority of this state or the United States: *Provided, however*, That actions and transactions prohibited or regulated under the laws administered by the insurance commissioner shall be subject to the provisions of RCW 19.86.020 and all sections of chapter 216, Laws of 1961 and chapter 19.86 RCW which provide for the implementation and enforcement of RCW 19.86.020 except that nothing required or permitted to be done pursuant to Title 48 RCW shall be construed to be a violation of RCW 19.86.020: *Provided, further*, That actions or transactions specifically permitted within the statutory authority granted to any regulatory board or commission established within Title 18 RCW shall not be construed to be a violation of chapter 19.86 RCW.

\*RCW 9.01.090 shall not be applicable to the terms of this chapter and no penalty or remedy shall result from a violation of this chapter except as expressly provided herein. [1974 ex.s. c 158 § 1; 1967 c 147 § 1; 1961 c 216 § 17.]

\*Reviser's note: "RCW 9.01.090" was repealed by 1975 1st ex.s. c 260 § 9A.92.010.

**19.86.900 Severability—1961 c 216.** If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1961 c 216 § 18.]

**19.86.910 Short title.** This act shall be known and designated as the "Consumer Protection Act." [1961 c 216 § 19.]

**19.86.920 Purpose—Interpretation—Liberal construction—Saving—1961 c 216.** The legislature hereby declares that the purpose of this act is to complement the body of federal law governing restraints of trade, unfair competition and unfair, deceptive, and fraudulent acts or practices in order to protect the public and foster fair and honest competition. It is the intent of the legislature that, in construing this act, the courts be guided by the interpretation given by the federal courts to the various federal statutes dealing with the same or similar matters and that in deciding whether conduct



restrains or monopolizes trade or commerce or may substantially lessen competition, determination of the relevant market or effective area of competition shall not be limited by the boundaries of the state of Washington. To this end this act shall be liberally construed that its beneficial purposes may be served.

It is, however, the intent of the legislature that this act shall not be construed to prohibit acts or practices which are reasonable in relation to the development and preservation of business or which are not injurious to the public interest, nor shall this act be construed to repeal by implication the Fair Trade Act contained in chapter 19.89 RCW. [1961 c 216 § 20.]

### Chapter 19.90 UNFAIR PRACTICES ACT

#### Sections

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19.90.901	Severability—1959 c 246.
19.90.910	Construction—1939 c 221.
19.90.920	Short title.

**19.90.010 Definitions.** As used in this chapter, words and terms are defined as follows:

"Person" includes any person, firm, association, organization, partnership, business trust, company, corporation or municipal or other public corporation;

"Sell" includes selling, offering for sale or advertising for sale;

"Give" includes giving, offering to give or advertising for the intent to give;

"Article or produce" includes any article, product, commodity, thing of value, service or output of a service trade;

"Cost" has its usual meaning and in addition as applied to production includes the cost of raw materials, labor and all overhead expenses of the producer, and as applied to distribution means the invoice cost or replacement cost, whichever is lower, of the article or product

to the distributor and vendor plus the cost of doing business by said distributor and vendor;

"Cost of doing business" or "overhead expense" means all costs of doing business incurred in the conduct of such business and must include without limitation the following items of expense: Labor (including salaries of executives and officers), rent, depreciation, selling cost, maintenance of equipment, delivery costs, credit losses, all types of licenses, taxes, insurance and advertising;

"Loss leader" means any article or product sold at less than cost as herein defined to induce, promote or encourage, the purchase of other merchandise, or which may have the tendency or capacity to mislead or deceive purchasers or prospective purchasers, or which diverts trade from or otherwise injures competitors;

"Vendor," in addition to its usual meaning, includes any person who performs work upon, renovates, alters or improves any personal property belonging to another person;

"Ordinary channels of trade" shall mean those ordinary, regular and daily transactions in the mercantile trade whereby title to an article or product, in no way damaged or deteriorated, is transferred from one person to another, and shall not include sales of bankrupt stocks, closeout goods, dents, sales of goods bought from a business or merchant retiring from business, fire sales and sales of damaged or deteriorated goods, which damage or deterioration results from any cause whatsoever: *Provided*, That this last listing herein shall not be held to be all inclusive but as an example only. [1939 c 221 § 1; RRS § 5854–21. Formerly RCW 19.88.010, part.]

**19.90.020 Price cutting—Allowable differentials and customer classes—Excepted articles and services—Rebates, etc.** It shall be unlawful for any person, engaged in the production, manufacture, distribution or sale of any article or product of general use or consumption, with the intent to destroy the competition of any regular established dealer in such article or product, or to prevent the competition of any person, who in good faith, intends and attempts to become such dealer, to discriminate between different sections of the same community, city, town or village in this state, by selling or furnishing such article or product at a lower price in one such section than in another: *Provided*, That nothing herein contained shall prevent differentials which make allowances for differences, if any, in the grade, quality or quantity when based and justified in the cost of manufacture, sale or delivery, or the actual cost of transportation from the point of production if a raw product or commodity, or from the point of manufacture if a manufactured product or commodity, or from the point of shipment to the point of destination: *Provided further*, That nothing herein contained shall prevent a selection of customers or a functional classification by any person of any customer as broker, jobber, wholesaler or retailer or a differential in price for any article or product as between any customers in different functional classifications. Motion picture films when licensed for exhibition to motion picture houses shall not be deemed to be an article or product under this chapter. Neither shall anything in this chapter be deemed to

apply to any service, article or product for which rates are established under the jurisdiction of the department of public service of the state of Washington and which are sold or furnished by any public utility corporation, or installation and repair services rendered in connection with any services, article or products; or to any service, article or product sold or furnished by a publicly owned public utility and upon which the rates would have been established under the jurisdiction of the department of public service of the state of Washington if such service, article or product had been sold or furnished by a public utility corporation, or installation and repair services rendered in connection with any such service, articles or products.

The inhibition of this chapter against locality discrimination shall embrace any scheme of special rebates, collateral contracts or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this section: *Provided, however,* That nothing in this section shall be construed to prohibit the meeting in good faith of a legal competitive price. [1939 c 221 § 2; RRS § 5854-22. Formerly RCW 19.88.050 through 19.88.090.]

**Reviser's note:** Department of public service was abolished and its powers and duties were transferred to the department of transportation and the department of public utilities by 1945 c 267 § 7. The department of transportation and the department of public utilities were abolished and their powers and duties transferred to the public service commission by 1949 c 117 § 8. The name of the public service commission was changed to the utilities and transportation commission by 1961 c 290; see note following Title 80 RCW digest.

**19.90.030 Liability of officers or agents—Sufficiency of allegation and proof.** Any person who, either as director, officer or agent of any firm or corporation or as agent of any person, violating the provisions of this chapter, assists or aids, directly or indirectly, in such violation shall be responsible therefor equally with the person, firm or corporation for whom or which he acts.

In the prosecution of any person as officer, director or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm or corporation for whom or which he acts. [1939 c 221 § 3; RRS § 5854-23. Formerly RCW 19.88.140, part and 19.88.150, part.]

**19.90.040 Price cutting practices forbidden—Generally.** It shall be unlawful for any person engaged in business within this state to sell any article or product at less than the cost thereof to such vendor, or give away any article or product, for the purpose of injuring competitors or destroying competition, or to use any article or product as a "loss leader," or in connection with any sale to make or give, or to offer to make or give, any special or secret rebate, payment, allowance, refund, commission or unearned discount, whether in the form of money or otherwise, or to secretly extend to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, or to make or enter into any collateral contract or device of any nature, whereby a sale below cost is effected, to the injury of a competitor, and where the

same destroys or tends to destroy competition. [1939 c 221 § 4; RRS § 5854-24. Formerly RCW 19.88.040.]

**19.90.050 Establishing cost—Forced sale stocks.** In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of said article or product purchased at a forced, bankrupt, closeout sale, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of date of said sale of said article or product replaced through the ordinary channels of trade, unless said article or product is kept separate from goods purchased in the ordinary channels of trade and unless said article or product is advertised and sold as merchandise purchased at a forced, bankrupt, closeout sale, or by means other than through the ordinary channels of trade, and said advertising shall state the conditions under which said goods were so purchased, and the quantity of such merchandise to be sold or offered for sale. [1939 c 221 § 5; RRS § 5854-25. Formerly RCW 19.88.130, part.]

*Proof of over-all costs: RCW 19.90.120.*

**19.90.060 Injunctions, civil suits and criminal prosecutions—Evidences of intent and of sale below cost.** In any injunction proceeding or, in the prosecution of any person as officer, director or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm or corporation for whom or which he acts; and in any civil or criminal proceeding under this chapter, where a particular trade or industry, of which the person, firm or corporation complained against is a member, has an established cost survey for the locality and vicinity in which the offense is committed, the said cost survey shall be deemed competent evidence to be used in proving the costs of the person, firm or corporation complained against within the provisions of this chapter; and in any such action proof of one or more acts of selling or giving away any article or product below cost or at discriminatory prices, together with proof of the injurious effect of such acts, shall be presumptive evidence of the purpose or intent to injure competitors or destroy competition; and in any such action where it is alleged and shown that the person complained against is selling, below his cost of doing business, and said person is including labor at less than the prevailing wage scale in the trade in which such person is engaged for the locality or vicinity in which he is doing business, evidence of such prevailing wage scale shall be admissible to prove the intent or purpose of such person to violate the provisions of this chapter; or in any such action where it appears that persons are employed or performing services without compensation for any person so complained against, such services shall be charged as an expense of the business in which rendered and at the rate of the wage for the services rendered prevailing at the time of the service at the place where rendered. [1939 c 221 § 6; RRS § 5854-26. Formerly RCW 19.88.130, part and 19.88.140, part.]

**19.90.070 Sales excepted.** The provisions of this chapter shall not apply to any sale made:

(1) In closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any such article or product and in the case of the sale of seasonal goods or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation: *Provided*, Notice is given to the public thereof;

(2) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof;

(3) By an officer acting under the orders of any court;

(4) In an endeavor made in good faith to meet the legal prices of a competitor as herein defined selling the same article or product, in the same locality or trade area, and in the ordinary channels of trade as herein defined; or in an endeavor made in good faith by a manufacturer, selling an article or product of his manufacture, in a transaction and sale to a wholesaler or retailer for resale to meet the legal prices of a competitor selling the same or a similar or comparable article or product, in the same locality or trade area and in the ordinary channels of trade as herein defined. [1939 c 221 § 7; RRS § 5854-27. Formerly RCW 19.88.100.]

**19.90.080 Price cutting contracts void.** Any contract, express or implied, made by any person in violation of any of the provisions of this chapter is declared to be an illegal contract and no recovery thereon shall be had. [1939 c 221 § 8; RRS § 5854-28. Formerly RCW 19.88.110.]

**19.90.090 Price cutting—Injunction—Civil action—Damages.** Any person may maintain an action to enjoin a continuance of any act or acts in violation of any of the provisions of this chapter and, if injured thereby, for the recovery of damages. If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of this chapter, it shall enjoin the defendant from a continuance thereof. It shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant the amount of the actual damages, if any, sustained by him. Commencement, pendency or conclusion of a civil action for injunction and/or damages shall not affect criminal liability. [1939 c 221 § 9; RRS § 5854-29. Formerly RCW 19.88.160.]

**19.90.100 Penalties for violations.** Violation of the provisions of this chapter shall constitute a misdemeanor; and any person, whether as principal, agent, officer or director, for himself, or for another person, or for any firm or corporation, or any corporation, who or which shall violate any of the provisions of this chapter shall be guilty of a misdemeanor for each single violation and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail not exceeding six months or by both said fine and imprisonment in the discretion of the court; and any criminal action shall not affect the right of any person to bring a civil action under RCW 19.90.090. [1939 c 221 § 10; RRS § 5854-30. Formerly RCW 19.88.120.]

**19.90.110 Solicitation or collusion to violate chapter—Civil or criminal liability.** Solicitation by, or collusion or joint participation between any wholesaler, manufacturer, distributor, jobber, contractor, broker, or retailer to violate any of the provisions of this chapter or the use of any threat, intimidation or boycott to effectuate the violation of the chapter shall make all persons participating in such solicitation, collusion or joint participation subject to civil or criminal liability under this chapter. [1939 c 221 § 11; RRS § 5854-31. Formerly RCW 19.88.150, part.]

**19.90.120 Proof of costs.** In any civil or criminal action proof of average over-all cost of doing business for any particular inventory period when added to the cost of production of each article or product, as to a producer, or invoice or replacement cost, whichever is lower, of each article or product, as to a distributor, shall be presumptive evidence of cost, and proof of transportation tariffs when fixed and approved by the department of public service of the state of Washington shall be presumptive evidence of delivery cost, as to any article or product involved in any such action. [1939 c 221 § 12; RRS § 5854-32. Formerly RCW 19.88.130, part.]

**19.90.130 Injunction in name of state.** The attorney general, in any county in which the superior court has jurisdiction, and the prosecuting attorneys, in their respective counties in which the superior court has jurisdiction, shall have power to institute and maintain an action in the name of the state of Washington to restrain and enjoin any person from performing or continuing the performance of any act or conduct which is prohibited herein. [1939 c 221 § 13; RRS § 5854-33. Formerly RCW 19.88.170.]

**19.90.140 Agreements to supply at less than cost and obligating user to purchase from supplier, declared illegal—Declaration of policy.** (1) The purpose of this section is to further the policy of the state of Washington in preserving free business competition by preventing monopolies and combinations in restraint of trade in violation of the Constitution, and discouraging practices tending to induce such results. Machinery, fixtures and other equipment are frequently given, leased, or sold under unusually favorable conditions with the agreement or understanding that the recipient thereof shall, insofar as a particular class of goods or merchandise is concerned, deal only in that designated by the donor, lessor, or vendor. After this control is established, temporary price cutting is usually secured through the recipient by various practices frequently beyond the control of the state. Competition is thereby destroyed and prices are then raised far beyond that which would prevail in the absence of such practices. The economy of the state and the welfare of its people are as a result seriously injured.

(2) The supplying of machinery, fixtures, or equipment to the business premises of a user thereof, at less than cost, conditioned upon the agreement of such user that certain goods, wares and merchandise or supplies

used or displayed in such machinery, fixtures, or equipment in connection with user's business shall be purchased exclusively from the person supplying the machinery, fixtures, or equipment for the purpose of injuring competitors or destroying competition, is against public policy and that portion of the agreement between the supplier and the user obligating the user to purchase certain goods, wares and merchandise or supplies exclusively from the supplier is illegal and unenforceable. [1959 c 246 § 1.]

**19.90.150 Agreements to supply at less than cost and obligating user to purchase from supplier, declared illegal—Prior agreements.** The provisions of RCW 19.90.140 shall not apply to any such agreement entered into prior to the \*effective date of this act for the supplying of such machinery, fixtures, or equipment. [1959 c 246 § 2.]

\*Reviser's note: The "effective date of this act" is midnight June 10, 1959, see preface 1959 session laws.

**19.90.160 Agreements to supply at less than cost and obligating user to purchase from supplier, declared illegal—Exemptions.** The provisions of RCW 19.90.140 and 19.90.150 shall not apply to the supplying of service stations or other buildings, machinery, fixtures, or equipment to dealers by distributors of motor vehicle fuel, as those terms are defined in RCW 82.36.010. [1959 c 246 § 3.]

**19.90.900 Severability—1939 c 221.** If any section, sentence, clause or phrase of this chapter is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the chapter. The legislature hereby declares that it would have passed this chapter, and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, sentences, clauses or phrases be declared unconstitutional. [1939 c 221 § 14.]

**19.90.901 Severability—1959 c 246.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1959 c 246 § 4.]

**19.90.910 Construction—1939 c 221.** The legislature declares that the purpose of this chapter is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented. This chapter shall be liberally construed that its beneficial purposes may be subserved. [1939 c 221 § 15.]

**19.90.920 Short title.** This chapter shall be known and designated as the "Unfair Practices Act." [1939 c 221 § 16.]

**Chapter 19.91  
UNFAIR CIGARETTE SALES ACT**

Sections	
19.91.010	Definitions.
19.91.020	Unlawful practices—Penalty.
19.91.030	Sales between wholesalers.
19.91.040	Transactions involving combinations of items, gifts, trading stamps, discounts, etc.
19.91.050	Transactions to which chapter does not apply.
19.91.060	Permissible advertisements, offers, sales—Action other than injunctive relief, judgment.
19.91.070	Contract in violation of chapter declared void.
19.91.080	Determining "cost to the retailer" and "cost to the wholesaler" when person complained against.
19.91.090	Cost to retailer or wholesaler—Purchases outside of ordinary channels of trade.
19.91.100	Cost survey is competent evidence.
19.91.110	Civil action for violations—Costs, attorney fees.
19.91.120	Unlawful to conduct business without license.
19.91.130	Wholesalers, retailers licenses—Issuance by department of revenue—Duration.
19.91.140	Wholesaler license fee—Display of license—Wholesaler's bond.
19.91.150	Retailer license fee—Vending machine fee.
19.91.160	Separate licenses to operate in each capacity required.
19.91.170	Engaging in business without license prohibited—Penalty.
19.91.180	Administration of chapter—Rules—Revocation, suspension, reinstatement of license, procedure—Appeals.
19.91.190	Fees, penalties paid into general fund.
19.91.900	Severability—1957 c 286.
19.91.910	Short title.

**19.91.010 Definitions.** When used in this chapter, the following words and phrases shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Person" means and includes any individual, firm, association, company, partnership, corporation, joint stock company, club, agency, syndicate, municipal corporation, or other political subdivision of this state, trust, receiver, trustee, fiduciary and conservator.

(2) "Wholesaler" includes any person who:

(a) Purchases cigarettes directly from the manufacturer, or

(b) Purchases cigarettes from any other person who purchases from or through the manufacturer, for the purpose of bona fide resale to retail dealers or to other persons for the purpose of resale only, or

(c) Services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Nothing contained herein shall prevent a person from qualifying in different capacities as both a "wholesaler" and "retailer" under the applicable provisions of this chapter.

(3) "Retailer" means and includes any person who operates a store, stand, booth, concession, or vending machine for the purpose of making sales of cigarettes at retail.

(4) "Tax commission" means the department of revenue of the state of Washington.

(5) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated,

or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(6) "Sale" means any transfer for a consideration, exchange, barter, gift, offer for sale and distribution, in any manner, or by any means whatsoever.

(7) "Sell at wholesale", "sale at wholesale" and "wholesale" sales mean and include any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale.

(8) "Sell at retail", "sale at retail" and "retail sales" mean and include any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the seller's business, to the purchaser for consumption or use.

(9) "Basic cost of cigarettes" means the invoice cost of cigarettes to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, whichever is lower, less all trade discounts and customary discounts for cash, to which shall be added the full face value of any stamps which may be required by any cigarette tax act of this state and by ordinance of any municipality thereof, now in effect or hereafter enacted, if not already included by the manufacturer in his list price.

(10) (a) The term "cost to the wholesaler" means the "basic cost of cigarettes" to the wholesaler plus the "cost of doing business by the wholesaler" which said cost of doing business amount shall be expressed percentage-wise in the ratio that said wholesalers "cost of doing business" bears to said wholesalers dollar volume per annum, and said "cost of doing business by the wholesaler" shall be evidenced and determined by the standards and methods of accounting regularly employed by him in his allocation of overhead costs and expenses, paid or incurred, and must include, without limitation, labor costs (including reasonable salaries for partners, executives, and officers), rent, depreciation, selling cost, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance and advertising.

(b) In the absence of the filing with the department of revenue of satisfactory proof of a lesser or higher cost of doing business by the wholesaler making the sale, the "cost of doing business by the wholesaler" shall be presumed to be four percent of the "basic cost of cigarettes" to the wholesaler, plus cartage to the retail outlet, if performed or paid for by the wholesaler, which cartage cost, in the absence of the filing with the department of revenue of satisfactory proof of a lesser or higher cost, shall be deemed to be one-half of one percent of the "basic cost of cigarettes" to the wholesaler.

(11) (a) The term "cost to the retailer" means the "basic cost of cigarettes" to the retailer plus the "cost of doing business by the retailer" which said cost of doing business amount shall be expressed percentage-wise in the ratio that said retailers "cost of doing business" bears to said retailers dollar volume per annum, and said "cost of doing business by the retailer" shall be evidenced and determined by the standards and methods of

accounting regularly employed by him in his allocation of overhead costs and expenses, paid or incurred, and must include, without limitation, labor (including reasonable salaries for partners, executives, and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance and advertising: *Provided*, That any retailer who, in connection with the retailer's purchase, receives not only the discounts ordinarily allowed upon purchases by a retailer but also, in whole or in part, discounts ordinarily allowed upon purchases by a wholesaler shall, in determining "cost to the retailer", pursuant to this subdivision, add the "cost of doing business by the wholesaler," as defined in subdivision (10) of this section, to the "basic cost of cigarettes" to said retailer, as well as the "cost of doing business by the retailer".

(b) In the absence of the filing with the department of revenue of satisfactory proof of a lesser or higher cost of doing business by the retailer making the sale, the "cost of doing business by the retailer" shall be presumed to be ten percent of the "basic cost of cigarettes" to the retailer.

(c) In the absence of the filing with the department of revenue of satisfactory proof of a lesser or higher cost of doing business, the "cost of doing business by the retailer", who, in connection with the retailer's purchase, receives not only the discounts ordinarily allowed upon purchases by a retailer but also, in whole or in part, the discounts ordinarily allowed upon purchases by a wholesaler, shall be presumed to be ten percent of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler".

(12) "Business day" means any day other than a Sunday or a legal holiday. [1967 ex.s. c 26 § 20; 1957 c 286 § 1.]

**Effective date**—1967 ex.s. c 26: The effective date of the 1967 amendment to this section is July 1, 1967, see note following RCW 82.01.050.

**Purpose**—Savings—1967 ex.s. c 26: See notes following RCW 82.01.050.

**Tax on cigarettes:** Chapter 82.24 RCW.

**Tax on cigarettes for school bonds:** RCW 28A.47.440.

**Tax on cigarettes for veterans bonus:** RCW 73.32.130, 73.33.090.

**19.91.020 Unlawful practices—Penalty.** It shall be unlawful and a violation of this chapter:

(1) For any retailer or wholesaler with intent to injure competitors or destroy or substantially lessen competition:

(a) To advertise, offer to sell, or sell, at retail or wholesale, cigarettes at less than cost to such a retailer or wholesaler, as said cost is defined in this chapter, as the case may be;

(b) To offer a rebate in price, to give a rebate in price, to offer a concession of any kind, or to give a concession of any kind or nature whatsoever in connection with the sale of cigarettes.

(2) For any retailer with intent to injure competitors or destroy or substantially lessen competition:

(a) To induce or attempt to induce or to procure or attempt to procure the purchase of cigarettes at a price less than "cost to wholesalers" as defined in this chapter;

(b) To induce or attempt to induce or to procure or attempt to procure any rebate or concession of any kind or nature whatsoever in connection with the purchase of cigarettes.

(3) Any retailer or wholesaler who violates the provisions of this section shall be guilty of a misdemeanor and shall be prosecuted and punished by a fine of not more than five hundred dollars for each such offense. Any individual who as a director, officer, partner, member, or agent of any person violating the provisions of this act assists or aids, directly or indirectly in such violation, shall equally with the person for whom he acts, be responsible therefor and subject to the punishment and penalties set forth herein.

(4) Evidence of advertisement, offering to sell, or sale of cigarettes by any retailer or wholesaler at less than cost to him, or evidence of any offer of a rebate in price, or the giving of a rebate in price or an offer of a concession, or the inducing, or attempt to induce, or the procuring, or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler or the retailer, shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition. [1957 c 286 § 2.]

**19.91.030 Sales between wholesalers.** When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in his selling price to the latter, "cost to the wholesaler", as provided by RCW 19.91.010(10), except that no such sale shall be made at a price less than the "basic cost of cigarettes" as defined in RCW 19.91.010(9), but the latter wholesaler, upon resale to a retailer, shall be deemed to be the wholesaler governed by the provisions of RCW 19.91.010(10). [1957 c 286 § 3.]

**19.91.040 Transactions involving combinations of items, gifts, trading stamps, discounts, etc.** (1) In all advertisements, offers for sale or sales involving two or more items, at least one of which items is cigarettes, at a combined price, and in all advertisements, offers for sale, or sales, involving the giving of any gift or concession of any kind whatsoever (whether it be coupons or otherwise), the retailer's or wholesaler's combined selling price shall not be below the "cost to the retailer" or the "cost to the wholesaler", respectively, of the total costs of all articles, products, commodities, gifts and concessions included in such transactions.

(2) In all advertisements, offers for sale, or sales wherein there is accepted as part of the purchase price any coupon, discount slip, trading stamp, or similar device, the net purchase price after deducting the value of said coupon, discount slip, or trading stamp, shall be not less than the retailers, or the wholesalers, as the case may be, as defined by this chapter, as being "cost of the retailer", or "cost of the wholesaler", respectively. [1957 c 286 § 4.]

**19.91.050 Transactions to which chapter does not apply.** The provisions of this chapter shall not apply to sales at retail or sales at wholesale made:

(1) As an isolated transaction and not in the usual course of business;

(2) Where cigarettes are advertised, offered for sale, or sold in bona fide clearance sales for the purpose of discontinuing trade in such cigarettes and said advertising, offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold;

(3) Where cigarettes are advertised, offered for sale, or sold as imperfect or damaged, and said advertising, offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold;

(4) Where cigarettes are sold upon the final liquidation of a business; or

(5) Where cigarettes are advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court. [1957 c 286 § 5.]

**19.91.060 Permissible advertisements, offers, sales—Action other than injunctive relief, judgment.**

(1) Any retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the legal price, as defined in this chapter, of a competitor who is selling the same article at cost to him as a retailer as prescribed in this chapter. Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the legal price, as defined in this chapter, of a competitor who is rendering the same type of service and is selling the same article at cost to him as a wholesaler as prescribed in this chapter. The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in RCW 19.91.050 shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of this section.

(2) In the absence of proof of the "price of a competitor", under this section, the "lowest cost to the retailer", or the "lowest cost to the wholesaler", as the case may be, determined by any "cost survey", made pursuant to RCW 19.91.100, may be deemed the "legal price of a competitor", within the meaning of this section. If the plaintiff elect not to seek injunctive relief, but does prove actual damages, plaintiff shall be entitled to the entry of a judgment in plaintiff's favor in the amount of said damages proven, together with his costs of suit and a reasonable attorney's fee to be fixed by the court. [1957 c 286 § 6.]

**19.91.070 Contract in violation of chapter declared void.** Any contract, expressed or implied, made by any person in violation of any of the provisions of this chapter, is declared to be an illegal and void contract and no recovery thereon shall be had. [1957 c 286 § 7.]

**19.91.080 Determining "cost to the retailer" and "cost to the wholesaler" when person complained against.**

(1) In determining "cost to the retailer" and "cost to the wholesaler" the department of revenue or a court shall receive and consider as bearing on the bona fides of the



cost, evidence tending to show that any person complained against under any of the provisions of this chapter purchased cigarettes, with respect to the sale of which complaint is made, at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true cost, discounts or terms of purchase, and shall also receive and consider as bearing on the bona fides of such cost, evidence of the normal, customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

(2) Merchandise given gratis or payment made to a retailer or wholesaler by the manufacturer thereof for display, or advertising, or promotion purposes, or otherwise, shall not be considered in determining the cost of cigarettes to the retailer or wholesaler. [1975 1st ex.s. c 278 § 13; 1957 c 286 § 8.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**19.91.090 Cost to retailer or wholesaler—Purchases outside of ordinary channels of trade.** In establishing the cost of cigarettes to the retailer or wholesaler, the invoice cost of said cigarettes purchased at a forced, bankrupt, or close-out sale, or other sale outside of the ordinary channels of trade, may not be used as a basis for justifying a price lower than one based upon the replacement cost of the cigarettes to the retailer or wholesaler in the quantity last purchased, through the ordinary channels of trade. [1957 c 286 § 9.]

**19.91.100 Cost survey is competent evidence.** Where a cost survey, pursuant to recognized statistical and cost accounting practices, has been made for the trading area in which the offense is committed, to establish the lowest "cost to the retailer" and the lowest "cost to the wholesaler", said cost survey shall be deemed competent evidence to be used in proving the cost to the person complained against within the provisions of this chapter. [1957 c 286 § 10.]

**19.91.110 Civil action for violations—Costs, attorney fees.** (1) In addition to penalties provided by RCW 19.91.020, any person injured by any violation of this chapter, may maintain an action in any court of equitable jurisdiction to prevent, restrain or enjoin such violation. If in such action a violation of this chapter shall be established, the court shall enjoin and restrain or otherwise prohibit such violation and in addition thereto shall assess in favor of the plaintiff and against the defendant the costs of the suit and reasonable attorneys' fees. In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved the plaintiff in said action, in addition to such injunctive relief and fees and costs of suit, shall be entitled to recover from the defendant the amount of actual damages sustained by the plaintiff. [1957 c 286 § 11.]

**19.91.120 Unlawful to conduct business without license.** After June 12, 1957, no person shall engage in,

or conduct the business of purchasing, selling, consigning, or distributing cigarettes in this state, without having first obtained the appropriate license for that purpose as prescribed in RCW 19.91.130. [1957 c 286 § 12.]

**19.91.130 Wholesalers, retailers licenses—Issuance by department of revenue—Duration.** The licenses issuable by the department of revenue under this chapter shall be as follows:

- (1) Wholesalers license.
- (2) Retailers license.

All licenses shall be issued by the department of revenue, which shall make rules and regulations respecting applications therefor and issuance thereof. The department of revenue may refrain from the issuance of any license under this chapter, where it has reasonable cause to believe that the applicant has wilfully withheld information requested of him for the purpose of determining the eligibility of the applicant to receive a license, or where it has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. Each such license shall lapse on the last day of June of the period for which it is issued, and each such license shall be continued annually upon the conditions that the licensee shall have paid the required fee and complied with all the provisions of this chapter and the rules and regulations of the department of revenue made pursuant thereto. [1975 1st ex.s. c 278 § 14; 1957 c 286 § 13.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**19.91.140 Wholesaler license fee—Display of license—Wholesaler's bond.** For each license issued to a wholesaler, and for each continuance thereof, there shall be paid to the department of revenue a fee of three hundred dollars. If a wholesaler sells or intends to sell cigarettes at two or more places of business, whether established or temporary, a separate license with a license fee of twenty-five dollars shall be required for each additional place of business. Each license, or certificate thereof, and such other evidence of license as the department of revenue shall require, shall be exhibited in the place of business for which it is issued and in such manner as may be prescribed by the department of revenue. The department of revenue shall require each licensed wholesaler to file with him a bond in an amount not less than one thousand dollars to guarantee the proper performance of his duties and the discharge of his liabilities under this chapter. The bond shall be executed by such licensed wholesaler as principal, and by a corporation approved by the department of revenue and authorized to engage in business as a surety company in this state, as surety. The bond shall run concurrently with the wholesaler's license. [1975 1st ex.s. c 278 § 15; 1957 c 286 § 14.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**19.91.150 Retailer license fee—Vending machine fee.** For each license issued to a retail dealer and for each continuance thereof, there shall be paid to the



department of revenue a fee of five dollars. For each license issued to a retail dealer operating a cigarette vending machine, and for each continuance thereof, there shall be paid to the department of revenue a fee of one additional dollar for each vending machine. [1975 1st ex.s. c 278 § 16; 1957 c 286 § 15.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**19.91.160 Separate licenses to operate in each capacity required.** Any person licensed only as a wholesaler, or as a retail dealer, shall not operate in any other capacity except under that for which he is licensed herein, unless the additional appropriate license or licenses are first secured. [1957 c 286 § 16.]

**19.91.170 Engaging in business without license prohibited—Penalty.** Any person who shall engage in any business or activity for which a license is required under the provisions of this chapter, without first having obtained a license to do so, or who, having had such a license, shall continue to engage in or conduct such business after any such license shall have been revoked, or during a suspension thereof, shall be guilty of a misdemeanor. [1957 c 286 § 17.]

**19.91.180 Administration of chapter—Rules—Revocation, suspension, reinstatement of license, procedure—Appeals.** (1) In addition to the penalties and rights imposed and set forth in RCW 19.91.020 and 19.91.110, the department of revenue may enforce the provisions of this chapter. The department of revenue shall have the power to adopt, amend and repeal rules and regulations necessary to enforce and administer the provisions of this chapter. The department of revenue is given full power and authority to revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state of Washington upon sufficient cause appearing of the violation of this chapter or upon the failure of such licensee or permittee to comply with any of the provisions of this chapter.

(2) No license or licenses shall be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by said department of revenue. The said department of revenue, upon a finding by same, that the licensee has failed to comply with any provision of this chapter or any rule or regulation promulgated thereunder, shall, in the case of the first offender, suspend the license or licenses of the said licensee for a period of not less than five nor more than twenty consecutive business days, and, in the case of a second or plural offender, shall suspend said license or licenses for a period of not less than twenty consecutive business days nor more than twelve months, and, in the event the said department of revenue finds the offender has been guilty of wilful and persistent violations, it may revoke said person's license or licenses.

(3) Any person whose license or licenses have been so revoked may apply to the department of revenue at the expiration of one year for a reinstatement of his license or licenses. Such license or licenses may be reinstated by

the department of revenue if it shall appear to the satisfaction of said department of revenue that the licensee will comply with the provisions of this chapter and the rules and regulations promulgated thereunder.

(4) No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of such suspension or revocation on the premises occupied by him or upon other premises controlled by him or others or in any other manner or form whatever.

(5) Any determination and order by the department of revenue, and any order of suspension or revocation by the department of revenue of the license or licenses, or refusal to reinstate a license or licenses after revocation shall be reviewable by an appeal to the superior court of Thurston county in and for the state of Washington. Said superior court shall review the order or ruling of the department of revenue and may hear the matter de novo, having due regard to the provisions of this chapter, and the duties imposed upon the department of revenue. Said review by the superior court, and any order entered thereon by said superior court, shall be appealable under and by virtue of the procedural law of this state. [1975 1st ex.s. c 278 § 17; 1957 c 286 § 18.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**19.91.190 Fees, penalties paid into general fund.** All fees and penalties received or collected by the commission pursuant to the provisions of this chapter shall be paid to the state treasurer, to be credited to the general fund. [1959 c 172 § 1; 1957 c 286 § 19.]

**Effective date—1959 c 172.** "Sec. 4. The effective date of this act is July 1, 1959." [1959 c 172 § 4.]

**Cigarette fee account—Moneys transferred to general fund.** "Sec. 2. On July 1, 1959, the tax commission shall transfer to the state general fund any unexpended balance remaining in the cigarette fee account." [1959 c 172 § 2.]

**Cigarette fee account—Warrants to be paid from general fund.** "Sec. 3. From and after July 1, 1959, all warrants drawn upon the cigarette fee account and not heretofore presented for payment shall be paid from the general fund." [1959 c 172 § 3.]

**19.91.900 Severability—1957 c 286.** The provisions of this chapter shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases, or parts be held unconstitutional or void, the remainder of this chapter shall continue in full force and effect. [1957 c 286 § 20.]

**19.91.910 Short title.** This chapter may be known and cited as the unfair cigarette sales act. [1957 c 286 § 21.]

## Chapter 19.92 WEIGHTS AND MEASURES—BREAD AND HOPS

### Sections

19.92.100	Bread—Standard loaves.
19.92.110	Bread—Open top or "hearth" loaves.
19.92.120	Bread—"Pullman" loaves.
19.92.240	Hops—Bale—Tare.

*Weighing commodities transported for sale: Chapter 15.80 RCW.*

**19.92.100 Bread—Standard loaves.** No person shall manufacture for sale, sell or offer or expose for sale, any bread except in the following weights, which shall be the net weights twelve hours after baking: "standard small loaf", which shall weigh not less than fifteen ounces and not more than seventeen ounces; "standard large loaf", which shall weigh not less than twenty-two and one-half ounces and not more than twenty-five and one-half ounces; or multiples of the foregoing weights for the "standard small loaf" and "standard large loaf": *Provided*, That variations at the rate of one ounce over and one ounce under the foregoing, per "standard small loaf", or one and one-half ounce over or under per "standard large loaf", or any multiple of the foregoing variations per each multiple type loaf, in the above specified unit weights are permitted in individual loaves, but the average weight of not less than twelve loaves of any one kind of loaf shall not be less than the weight hereinabove prescribed. It shall be unlawful to sell or expose for sale bread in a loaf of such form that it has the appearance and size of a loaf of greater weight. [1955 c 61 § 1; 1937 c 214 § 1; 1927 c 194 § 10; RRS § 11626.]

**19.92.110 Bread—Open top or "hearth" loaves.** "Open top" or "hearth" means bread baked in pans or forms the top or top and sides of which are not enclosed.

"Open top" or "hearth bread" shall be baked in pans or forms the length and width of which shall not exceed the following:

"Standard small loaf", length, nine inches, width, four and one-half inches;

"Standard large loaf", length, twelve and one-quarter inches, width, four and one-half inches. [1955 c 61 § 3. Prior: (i) 1937 c 214 § 2, part; RRS § 11626-1, part. (ii) 1937 c 214 § 3; RRS § 11626-2.]

**19.92.120 Bread—"Pullman" loaves.** "Pullman bread" means bread baked in pans all six sides of which are enclosed.

"Pullman bread" shall be baked in pans the length and cubic content of which shall not exceed the following:

"Standard small Pullman loaf", length, nine inches; cubic content, one hundred forty-four cubic inches;

"Standard large Pullman loaf", length, thirteen inches; cubic content, two hundred and eight cubic inches;

"Standard large multiple Pullman loaf 'a'", length, sixteen inches; cubic content, two hundred fifty-six cubic inches;

"Standard large multiple Pullman loaf 'b'", length, twenty inches; cubic content, four hundred five cubic inches. [1955 c 61 § 4. Prior: (i) 1937 c 214 § 2, part; RRS § 11626-1, part. (ii) 1937 c 214 § 4; RRS § 11626-3.]

**19.92.240 Hops—Bale—Tare.** The amount of tare to be deducted from the gross weight of each bale of hops grown and hereafter sold in this state is hereby fixed at five pounds per bale. Five yards of baling cloth is the maximum quantity to be used in making the bale,

and the standard weight of each yard of baling cloth is hereby fixed at from twenty-four to thirty ounces. The standard weight for a bale of hops is hereby fixed at from one hundred and seventy-five to two hundred and ten pounds. Any vendor of hops using heavier sacking than that specified in this section, or using any extraneous matter in the baling thereof, shall have the same deducted as additional tare. [1890 p 522 § 1. No RRS.]

### Chapter 19.94

### WEIGHTS AND MEASURES—1969 ACT

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**19.94.010 Application of terms.** Terms used in this chapter shall have the meaning given to them in RCW 19.94.020 through 19.94.130 unless where used the context shall clearly indicate to the contrary. [1969 c 67 § 1.]

**19.94.020 "Department".** "Department" means the department of agriculture of the state of Washington. [1969 c 67 § 2.]

**19.94.030 "Director".** "Director" means the director of the department or his duly appointed representative. [1969 c 67 § 3.]

**19.94.040 "Person".** "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. [1969 c 67 § 4.]

**19.94.050 "Weights and measures".** "Weights and measures" means weights and measures of every kind, instruments and devices for weighing and measuring, and every appliance and accessory associated with any or all such instruments and devices. [1969 c 67 § 5.]

**19.94.060 "City".** "City" means a city of the first class with a population of over fifty thousand persons. [1969 c 67 § 6.]

**19.94.070 "Cord".** "Cord" means the measurement of wood intended for fuel or pulp purposes that is contained in a space of one hundred and twenty-eight cubic feet, when the wood is ranked and well stowed. [1969 c 67 § 7.]

**19.94.080 "City sealer".** "City sealer" means the sealer of weights and measures of a city. [1969 c 67 § 8.]

**19.94.090 "Ton".** "Ton" means a unit of two thousand pounds avoirdupois weight. [1969 c 67 § 9.]

**19.94.100 "Commodity in package form".** The term "commodity in package form" shall be construed to mean a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of an auxiliary shipping container enclosing packages that individually conform to the requirements of this chapter. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling

price based on an established price per unit of weight or of measure, shall be construed to be a commodity in package form. [1969 c 67 § 10.]

**19.94.110 "Meat".** "Meat" shall mean and include all animal flesh, carcasses or parts of animals, and shall include fish, shell fish, game, poultry and meat food products of every kind and character, whether fresh, frozen, cooked, cured or processed. [1969 c 67 § 11.]

**19.94.120 "Poultry".** "Poultry" shall mean all fowl, domestic or wild, which is prepared, processed, sold or intended or offered for sale. [1969 c 67 § 12.]

**19.94.130 "Fish".** "Fish" shall mean any water-breathing animal, including shellfish such as, but not limited to, lobster, clam, crab or other mollusca which is prepared, processed, sold, or intended or offered for sale. [1969 c 67 § 13.]

**19.94.140 Definitions applicable to rules or regulations.** In any rule or regulation adopted pursuant to this chapter, the following definitions shall apply:

(1) A "nonconsumer package" or "package of nonconsumer commodity" shall be construed to mean any commodity in package form other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

(2) A "consumer package" or "package of consumer commodity" shall be construed to mean a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions. [1969 c 67 § 14.]

**19.94.150 Standards recognized.** The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in this state. The definitions of basic units of weight and measure and weights and measures equivalents, as published by the national bureau of standards, are recognized and shall govern weighing and measuring equipment and transactions in the state. [1969 c 67 § 15.]

**19.94.160 State standards.** Weights and measures in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by the state for use as state standards, shall, when the same shall have been certified as such by the national bureau of standards, be the state standards of weight and measure. The state standards shall be kept in a place designated by the director and shall not be removed from the said place except for repairs or for certification: *Provided*, That they shall be submitted at least once in ten years to the national bureau of standards for certification. [1969 c 67 § 16.]

**19.94.170 Field standards.** In addition to the state standards provided for in RCW 19.94.160, there shall be supplied by the state such "field standards" and such equipment as may be found necessary to carry out the provisions of this chapter. The field standards shall be verified upon their initial receipt and at least once each year thereafter, by comparison with the state standards. [1969 c 67 § 17.]

**19.94.180 State sealer—Custody of standards—Supervision over city sealers and weights and measures.** The director shall be the state sealer of weights and measures, which shall include all towns and all cities with a population of less than fifty thousand persons, and he shall have the custody of the state standards of weights and measures and of the other standards and equipment provided for in this chapter. The director shall have general supervision over city sealers of weights and measures and over the weights and measures offered for sale, sold, or in use in the state. [1969 c 67 § 18.]

**19.94.190 Rules and regulations—Correct and incorrect apparatus.** The director shall enforce the provisions of this chapter and shall issue from time to time reasonable rules and regulations for enforcing and carrying out the purposes of this chapter. Such rules and regulations shall have the effect of law and may include (1) standards of net weight, measure, or count, and reasonable standards of fill for any commodity in package form, (2) rules governing the technical and reporting procedures to be followed, and the report and record forms and marks of rejection to be used by the director and city sealers in the discharge of their official duties, (3) rules governing technical test procedures, reporting procedures, record and reporting forms to be used by commercial firms when installing, repairing or testing commercial weights or measures, (4) rules providing that all weights and measures used by commercial firms in repairing or servicing commercial weighing and measuring devices shall be calibrated by the department and be directly traceable to state standards and shall be submitted to the department for calibration and certification as necessary and/or at such reasonable intervals as may be established or required by the director, (5) exemptions from the sealing or marking requirements of RCW 19.94.250 with respect to weights and measures of such character or size that such sealing or marking would be inappropriate, impracticable, or damaging to the apparatus in question, (6) exemptions from the requirements of RCW 19.94.200 and 19.94.210 for testing, with respect to classes of weights and measures found to be of such character that periodic retesting is unnecessary to continued accuracy. These regulations shall include specifications, tolerances, and regulations for weights and measures of the character of those specified in RCW 19.94.210, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those (a) that are not accurate, (b) that are of such construction that they are faulty, that is, that are not reasonably permanent in

their adjustment or will not repeat their indications correctly, or (c) that facilitate the perpetration of fraud. The specifications, tolerances, and regulations for commercial weighing and measuring devices, together with amendments thereto, as recommended by the national bureau of standards Handbook 44, third edition as published at the time of the enactment of this chapter shall be the specifications, tolerances, and regulations for commercial weighing and/or measuring devices of the state. The director may, at his discretion, adopt by regulation any supplement to the national bureau of standards Handbook 44, third edition or any subsequent similar publication by such bureau. For the purpose of this chapter, apparatus shall be deemed to be "correct" when it conforms to all applicable requirements promulgated as specified in this section; all other apparatus shall be deemed to be "incorrect". [1969 c 67 § 19.]

**19.94.200 Testing, inspecting, approving standards, weights and measures of cities and institutions.** The director shall test the standards of weight and measure procured by any city for which the appointment of a sealer of weights and measures is provided by this chapter, at least once every five years, and shall approve the same when found to be correct, and he shall inspect such standards at least once every two years. He shall test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, and he shall report his findings, in writing, to the executive officer of the institution concerned. [1969 c 67 § 20.]

**19.94.210 Inspection and testing of weights and measures—Single-service devices, sample lots.** If not otherwise provided by law, the director shall have the power to inspect and test to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. A representative sample may be used as the basis to determine whether any lot is incorrect. It shall be the duty of the director, except in cities for which city sealers of weights and measures have been appointed as provided for in this chapter, as often as he may deem necessary, to inspect and test to ascertain if they are correct, all weights and measures commercially used (1) in determining the weight, measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight or of measure or of count, (2) in computing the basic charge or payment for services rendered on the basis of weight or of measure or of count, or (3) in determining weight or measurement or count when a charge is made for such determination: *Provided*, That with respect to single-service devices, that is, devices designed to be used commercially only once and to be then discarded, and with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, the inspection and testing of each individual device shall not be required and the inspecting and testing requirements of this section will be satisfied when inspections and tests are made on representative sample lots of such devices; and the larger lot of which such

sample lots are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on such sample lots. [1969 c 67 § 21.]

**19.94.220 Investigations, purposes.** The director shall investigate complaints made to him concerning violations of the provisions of this chapter, and shall, upon his own initiative, conduct such investigations as he deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of the provisions of this chapter and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions. [1969 c 67 § 22.]

**19.94.230 Inspections to determine conformity to law—Off sale order—Marks, tags, etc.** The director shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered, exposed for sale, sold or in the process of delivery to determine whether the same contain the amounts represented and whether they be kept, offered, exposed for sale or sold in accordance with law; and when such packages or amounts of commodities are found not to contain the amounts represented or are found to be kept, offered or exposed for sale in violation of law, the director may order them off sale and may mark, tag, or stamp them in a manner prescribed by him. In carrying out the provisions of this section, the director may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of a result obtained on a sample selected from and representative of such lot. No person shall (1) sell, keep, offer or expose for sale any package or amount of commodity that has been ordered off sale as provided in this section unless and until such package or amount of commodity has been brought into full compliance with legal requirements or (2) dispose of any package or amount of commodity that has been ordered off sale and that has not been brought into compliance with legal requirements in any manner except with the specific approval of the director. [1969 c 67 § 23.]

**19.94.240 Stop-use, stop-removal and removal orders.** The director shall have the power to issue stop-use orders, stop-removal orders and removal orders with respect to weights and measures being, or susceptible of being, commercially used, and to issue stop-removal orders and removal orders with respect to packages or amounts of commodities kept, offered, exposed for sale, sold or in process of delivery, whenever in the course of his enforcement of the provisions of this chapter and/or rules and regulations adopted hereunder he deems it necessary or expedient to issue such orders. No person shall use, remove from the premises specified or fail to remove from any premises specified any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-removal order or removal order issued under the authority of this section. [1969 c 67 § 24.]

**19.94.250 Rejection of incorrect weights and measures.** The director shall reject and mark or tag as "rejected" such weights and measures as he finds upon inspection or test to be "incorrect" as defined in RCW 19.94.190, but which in his best judgment are susceptible of satisfactory repair: *Provided*, That such sealing or marking shall not be required with respect to such weights and measures as may be exempted therefrom by a regulation of the director issued under the authority of RCW 19.94.190. The director may reject or seize any weights and measures found to be incorrect that, in his best judgment, are not susceptible of satisfactory repair. Weights and measures that have been rejected may be confiscated and may be destroyed by the director if not corrected as required by RCW 19.94.330 or if used or disposed of contrary to the requirements of said section. [1969 c 67 § 25.]

**19.94.260 Arrest of violators—Entry of premises—Search warrant.** (1) With respect to the enforcement of this chapter and any other acts dealing with weights and measures that he is, or may be empowered to enforce, the director is authorized to arrest any violator of the said chapter, and to seize for use as evidence incorrect or unsealed weights and measures or amounts or packages of commodities to be used, retained, offered, exposed for sale or sold in violation of the law.

(2) In the performance of his official duties the director is authorized at reasonable times during the normal business hours of the person using the weights and measures to enter into or upon any structure or premises where weights and measures are used or kept for commercial purposes. Should the director be denied access to any premises or establishment where such access was sought for the purposes set forth in this section, he may apply to any court of competent jurisdiction for a search warrant authorizing access to such premises or establishment for said purposes. The court may, upon such application, issue the search warrant for the purposes requested. [1969 c 67 § 26.]

**19.94.270 Delegation of powers and duties.** The powers and duties given to and imposed upon the director by the provisions in RCW 19.94.200, 19.94.210, 19.94.220, 19.94.230, 19.94.240, 19.94.250, 19.94.260 and 19.94.350 may be performed by any of his duly authorized representatives acting under the instructions and at the direction of the director. [1969 c 67 § 27.]

**19.94.280 City sealers and deputies—Appointment, removal.** There shall be a sealer of weights and measures in every city and such deputies as may be required by ordinance of each such city governed by this chapter. Such sealer and such deputies shall in any such city be appointed by, and they shall hold office subject to applicable local civil service laws and regulations; otherwise they shall be appointed by the mayor, or other chief executive officer of such city, by and with the advice and consent of the governing body of such city, and they may be removed for cause in the same manner. [1969 c 67 § 28.]

**19.94.290 City sealers and deputies—Bond.** A bond with sureties, to be approved by the appointing power, and conditioned upon the faithful performance of his duties and the safekeeping of any standards or equipment entrusted to his care, shall forthwith, upon his appointment, be given by each city sealer and deputy sealer in the penal sum of one thousand dollars; the premium on such bond shall be paid by the city for which the officer in question is appointed. [1969 c 67 § 29.]

**19.94.300 City sealers and deputies—Powers and duties.** The city sealer and his deputy sealers when acting under his instructions and at his direction shall have the same powers and shall perform the same duties within the city for which appointed as are granted to and imposed upon the director by RCW 19.94.210, 19.94.220, 19.94.230, 19.94.240, and 19.94.250. [1969 c 67 § 30.]

**19.94.310 City sealers and deputies—Duties of governing body—Sealer to have annual standards comparison made.** The council or other governing body of each city for which a city sealer has been appointed as provided for by RCW 19.94.280 shall (1) procure at the expense of the city such standards of weight and measure and such additional equipment, to be used for the enforcement of the provisions of this chapter in such city, as may be prescribed by the director; (2) provide a suitable office for the city sealer; and (3) make provision for the necessary clerical services, supplies, transportation and for defraying contingent expenses incidental to the official activities of the city sealer in carrying out the provisions of this chapter. When the standards of weight and measure required by this section to be provided by a city shall have been examined and approved by the director, they shall be the official standards for such city. It shall be the duty of the city sealer to make, or to arrange to have made, at least as frequently as once a year, comparisons between his field standards and appropriate standards of a higher order belonging to his city or to the state, in order to maintain such field standards in accurate condition. [1969 c 67 § 31.]

**19.94.320 City sealers and deputies—Director to have concurrent authority—Powers and duties of chapter are additional.** In cities for which city sealers of weights and measures have been appointed as provided for in this chapter, the director shall have concurrent authority to carry out the provisions of this chapter. The powers and duties relative to weights and measures contained in this chapter shall be in addition to the powers granted to any city by law or charter. [1969 c 67 § 32.]

**19.94.330 Correction of rejected weights and measures.** Weights and measures that have been rejected under the authority of the director or a city sealer shall remain subject to the control of the rejecting authority until such time as suitable repair or disposition thereof has been made as required by this section. The owners of such rejected weights and measures shall cause the same to be made correct within thirty days or such longer period as may be authorized by the rejecting authority;

or, in lieu of this, may dispose of the same, but only in such a manner as is specifically authorized by the rejecting authority. Weights and measures that have been rejected shall not again be used commercially until they have been officially reexamined and found to be correct or until specific written permission for such use is issued by the rejecting authority. [1969 c 67 § 33.]

**19.94.340 Sales of commodities—How measured—Exceptions—Regulations to assure good practice and accuracy.** Commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in this chapter, commodities not in liquid form shall be sold only by weight, by measure of length or area, or by count: *Provided*, That liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only if such methods give accurate information as to the quantity of commodity sold: *And provided further*, That the provisions of this section shall not apply (1) to commodities when sold for immediate consumption on the premises where sold, (2) to vegetables when sold by the head or bunch, (3) to commodities in containers standardized by a law of this state or by federal law, (4) to commodities in package form when there exists a general consumer usage to express the quantity in some other manner, (5) to concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure, or (6) to unprocessed vegetable and animal fertilizer when sold by cubic measure. The director may issue such reasonable regulations as are necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented to be accurate and informative to all interested parties. [1969 c 67 § 34.]

**19.94.350 Packaged commodities in intrastate commerce—Contents of declaration on outside—Regulations.** Except as otherwise provided in this chapter, any commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, offered or exposed for sale or sold in intrastate commerce, shall bear on the outside of the package such definite, plain, and conspicuous declaration of (1) the identity of the commodity in the package unless the same can easily be identified through the wrapper or container, (2) the net quantity of the contents in terms of weight, measure or count; and (3) in the case of any package not sold on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by regulation issued by the director: *Provided*, That in connection with the declaration required under subdivision (2) of this section, neither the qualifying term "when packed" or any words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo", "giant", "full", "or over", and the like) that tends to exaggerate the amount of commodity in a package, shall be used: *And provided further*, That

under clause (2) the director shall by regulation establish (a) reasonable variations to be allowed, (b) exemptions as to small packages and (c) exemptions as to commodities put up in variable weights or sizes for sale to the consumer intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer. [1969 c 67 § 35.]

**19.94.360 Declaration of price on outside of package.** In addition to the declarations required by RCW 19.94-.350, any commodity in package form, the package being one of a lot containing random weights, measures or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count. [1969 c 67 § 36.]

**19.94.370 Misleading wrappers, containers of packaged commodities—Standards of fill required.** No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed or filled as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standards of fill as may have been prescribed for the commodity in question by the director. [1969 c 67 § 37.]

**19.94.380 "Weight" defined as net weight—Sales, contracts based upon net weight.** The word "weight" as used in this chapter in connection with any commodity shall mean net weight. Whenever any commodity is sold on the basis of weight, the net weight of the commodity shall be employed, and all contracts concerning commodities shall be so construed. [1969 c 67 § 38.]

**19.94.390 Price not to be misleading, deceiving, misrepresented—Fractions.** Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, poster or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half the height and one-half the width of the numerals representing the whole cents. [1969 c 67 § 39.]

**19.94.400 Meat, fish, poultry to be sold by weight—Exceptions.** Except for immediate consumption on the premises where sold or as one of several elements comprising a meal sold as a unit, for consumption elsewhere than on the premises where sold, all meat, meat products, fish and poultry offered or exposed for sale or sold as food, unless otherwise provided for by the laws of the state of Washington, shall be offered or exposed for sale and sold by weight. [1969 c 67 § 40.]

**19.94.410 Butter, margarine to be sold by weight in units.** Butter, oleomargarine and margarine shall be offered and exposed for sale and sold by weight and only in units of one-quarter pound, one-half pound, one pound or multiples of one pound, avoirdupois weight. [1969 c 67 § 41.]

**19.94.420 Fluid dairy products to be packaged for retail sale in certain units.** All fluid dairy products, including but not limited to whole milk, skimmed milk, cultured milk, sweet cream, sour cream and buttermilk and all fluid imitation and fluid substitute dairy products shall be packaged for retail sale only in units as provided by the director of the department of agriculture by regulation pursuant to the provisions of chapter 34.04 RCW. [1975 1st ex.s. c 51 § 1; 1969 c 67 § 42.]

**19.94.430 Packaged flour to be kept, sold, etc., in certain units.** When in package form and when packed, kept, offered, exposed for sale or sold, flour such as, but not limited to, wheat flour, whole wheat flour, graham flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, corn meal and hominy grits shall be packaged only in units of five, ten, twenty-five, fifty and one hundred pounds avoirdupois weight: *Provided*, That packages in units of less than five pounds or more than one hundred pounds shall be permitted. [1969 c 67 § 43.]

**19.94.440 Commodities sold in bulk—Delivery tickets.** When a vehicle delivers to an individual purchaser a commodity in bulk, and the commodity is sold in terms of weight units, the delivery shall be accompanied by a duplicate delivery ticket with the following information clearly stated, in ink or other indelible marking equipment and, in clarity, equal to type or printing: (1) the name and address of the vendor, (2) the name and address of the purchaser, and (3) the net weight of the delivery expressed in pounds, and, if the net weight is derived from determinations of gross and tare weights, such gross and tare weights also shall be stated in terms of pounds. One of these tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity, or shall be surrendered on demand to the director or the deputy director or the inspector, or the sealer or deputy sealer, who, if he desires to retain it as evidence, shall issue a weight slip in lieu thereof for delivery to the purchaser: *Provided*, That if the purchaser himself carries away his purchase, the vendor shall be required only to give the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to him. [1969 c 67 § 44.]

**19.94.450 Solid fuels to be sold by weight—Delivery tickets.** All solid fuels such as, but not limited to, coal, coke, charcoal, broiler chips, pressed fuels and briquets shall be sold by weight: *Provided*, That solid fuels such as hogged fuel, sawdust and similar industrial fuels may be sold or purchased by cubic measure. Unless the fuel is delivered to the purchaser in package form,



each delivery of coal, coke, or charcoal to an individual purchaser shall be accompanied by duplicate delivery tickets on which, in ink or other indelible substance, there shall be clearly stated (1) the name and address of the vendor; (2) the name and address of the purchaser; and (3) the net weight of the delivery and the gross and tare weights from which the net weight is computed, each expressed in pounds. One of these tickets shall be retained by the vendor and the other shall be delivered to the purchaser at the time of delivery of the fuel, or shall be surrendered, on demand, to the director or his deputy or inspector or a city sealer or deputy sealer who, if he desires to retain it as evidence, shall issue a weight slip in lieu thereof for delivery to the purchaser: *Provided*, That if the purchaser carries away his purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of fuel delivered to him. [1969 c 67 § 45.]

**19.94.460 Heating oils—Delivery tickets—Statements.** All stove and furnace oil shall be sold by liquid measure or by net weight in accordance with the provisions of RCW 19.94.340. In the case of each delivery of such liquid fuel not in package form, and in an amount greater than ten gallons in the case of sale by liquid measure or one hundred pounds in the case of sale by weight, there shall be rendered to the purchaser, either (a) at the time of delivery or (b) within a period mutually agreed upon in writing or otherwise between the vendor and the purchaser, a delivery ticket or a written statement on which, in ink or other indelible substance, there shall be clearly and legibly stated (1) the name and address of the vendor; (2) the name and address of the purchaser; (3) the identity of the type of fuel comprising the delivery; (4) the unit price (that is, price per gallon or per pound, as the case may be), of the fuel delivered; (5) in the case of sale by liquid measure, the liquid volume of the delivery together with any meter readings from which such liquid volume has been computed, expressed in terms of the gallon and its binary or decimal subdivisions; and (6) in the case of sale by weight, the net weight of the delivery, together with any weighing scale readings from which such net weight has been computed, expressed in terms of tons or pounds avoirdupois. [1969 c 67 § 46.]

**19.94.470 Berries and small fruit.** Berries and small fruit shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of one-half dry pint, one dry pint or one dry quart: *Provided*, That the marking provisions of RCW 19.94.340 shall not apply to such dry volume containers. [1969 c 67 § 47.]

**19.94.480 Fractional units as fractional value—Contracts.** Fractional parts of any unit of weight or measure shall mean like fractional parts of the value of such unit as prescribed or defined in RCW 19.94.070, 19.94.090 and 19.94.150, and all contracts concerning the sale of commodities and services shall be construed in accordance with this requirement. [1969 c 67 § 48.]

**19.94.490 Obstruction of director or sealer in performance of duties—Penalty.** Any person who shall hinder or obstruct in any way the director, a city sealer or deputy sealer, in the performance of his official duties, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty dollars or more than two hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment. [1969 c 67 § 49.]

**19.94.500 Impersonation of director or sealer—Penalty.** Any person who shall impersonate in any way the director, or a city sealer or a deputy sealer, by the use of his seal or a counterfeit of his seal, or in any other manner, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars or more than five hundred dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. [1969 c 67 § 50.]

**19.94.510 Unlawful practices—Penalty.** Any person who, by himself, by his servant or agent, or as the servant or agent of another person, performs any one of the acts enumerated in subsections (1) through (9) below, shall be guilty of a misdemeanor and upon a second or subsequent conviction thereof he shall be guilty of a gross misdemeanor.

(1) Use or have in possession for the purpose of using for any commercial purpose specified in RCW 19.94.210, sell, offer, expose for sale or hire or have in possession for the purpose of selling or hiring an incorrect weight or measure or any device or instrument used or calculated to falsify any weight or measure.

(2) Use or have in possession for current use in the buying or selling of any commodity or thing, for hire or award, or in the computation of any basic charge or payment for services rendered on the basis of weight or measurement, or in the determination of weight or measurement when a charge is made for such determination, any incorrect weight or measure.

(3) Dispose of any rejected or condemned weight or measure in a manner contrary to law or regulation.

(4) Remove from any weight or measure, contrary to law or regulation, any tag, seal, stamp or mark placed thereon by the director, or a city sealer or deputy sealer.

(5) Sell, offer or expose for sale less than the quantity he represents of any commodity, thing or service.

(6) Take more than the quantity he represents of any commodity, thing, or service when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing or service is determined.

(7) Keep for the purpose of sale, advertise, offer or expose for sale or sell any commodity, thing or service in a condition or manner contrary to law or regulation.

(8) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some

position which may reasonably be assumed by a customer.

(9) Violate any provision of this chapter or of the rules and/or regulations promulgated under the provisions of this chapter for which a specific penalty has not been prescribed. [1969 c 67 § 51.]

**19.94.520 Injunction against violations.** The director is authorized to apply to any court of competent jurisdiction for, and such court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining any person from violating any provision of this chapter. [1969 c 67 § 52.]

**19.94.530 Proof of existence of weighing or measuring device presumed proof of regular use.** For the purposes of this chapter, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, enclosure, stand, or vehicle in which or from which it is shown that buying or selling is commonly carried on, shall, in the absence of conclusive evidence to the contrary, be presumptive proof of the regular use of such weight or measure or weighing or measuring device for commercial purposes and of such use by the person in charge of such building, enclosure, stand or vehicle. [1969 c 67 § 53.]

**19.94.900 Chapter cumulative and nonexclusive.** The provisions of this chapter shall be cumulative and non-exclusive and shall not affect any other remedy available at law. [1969 c 67 § 54.]

**19.94.910 Severability—1969 c 67.** If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, or any section, provision or part thereof not adjudged invalid or unconstitutional. [1969 c 67 § 55.]

## Chapter 19.98

### FARM IMPLEMENTS, MACHINERY, PARTS

#### Sections

19.98.010	Contracts between retailer and wholesaler—Cancellation—Repurchase payments for unsold merchandise—Amounts—Return—Application of section.
19.98.020	Repurchase payments—Liens and claims.
19.98.030	Prices—How determined.
19.98.040	Failure or refusal to make payments—Civil action.
19.98.900	Effective date—1975 1st ex.s. c 277.
19.98.910	Severability—1975 1st ex.s. c 277.

**19.98.010 Contracts between retailer and wholesaler—Cancellation—Repurchase payments for unsold merchandise—Amounts—Return—Application of section.** Whenever any person, firm, or corporation engaged in the retail sale of farm implements and repair parts therefor enters into a written contract with any wholesaler, manufacturer, or distributor of farm implements, machinery, attachments, accessories, or repair parts whereby such retailer agrees to maintain a stock of parts or complete or whole machines, attachments, or accessories, and either party to such contract

desires to cancel or discontinue the contract, unless the retailer should desire to keep such merchandise the manufacturer, wholesaler, or distributor shall pay the retailer for the merchandise. Such payment shall be in the amount of one hundred percent of the net cost of all current unused complete farm implements, machinery, attachments, and accessories, including transportation charges paid by the retailer, and eighty-five percent of the current net prices on repair parts, including superseded parts listed in current price lists or catalogs which parts had previously been purchased from such wholesaler, manufacturer, or distributor and held by such retailer on the date of the cancellation or discontinuance of such contract or thereafter received by such retailer from the wholesaler, manufacturer, or distributor. The wholesaler, manufacturer, or distributor shall also pay such retailer a sum equal to five percent of the current net price of all parts returned for the handling, packing, and loading of such parts for return: *Provided*, That the provisions of this section shall apply only to repair parts which are new, unused, and in good condition. Upon the payment of such amounts, the title to such farm implements, farm machinery, attachments, accessories, or repair parts, shall pass to the manufacturer, wholesaler, or distributor making such payment, and such manufacturer, wholesaler, or distributor shall be entitled to the possession of such merchandise.

The provisions of this section shall apply to any annual part return adjustment agreement made between a seller or retailer and a manufacturer, wholesaler, or distributor.

The provisions of this section shall be supplemental to any agreement between the retailer and the manufacturer, wholesaler, or distributor covering the return of farm implements, machinery, attachments, accessories, and repair parts so that the retailer can elect to pursue either his contract remedy or the remedy provided herein, and an election by the retailer to pursue his contract remedy shall not bar his right to the remedy provided herein as to those farm implements, machinery, attachments, accessories, and repair parts not affected by the contract remedy.

The provisions of this section shall apply to all contracts now in effect which have no expiration date and are a continuing contract, and all other contracts entered into or renewed after January 1, 1976. Any contract in force and effect on January 1, 1976, which by its own terms will terminate on a date subsequent thereto shall be governed by the law as it existed prior to this chapter: *Provided*, That no contract covered by this chapter may be cancelled by any party without good cause. Good cause shall include, but shall not be restricted to, the failure of any party to comply with the lawful provisions of the contract, the adjudication of any party to a contract as a bankrupt, wrongful refusal of manufacturer, wholesaler, or distributor to supply farm machinery, farm implements and repair parts therefor. [1975 1st ex.s. c 277 § 1.]

**19.98.020 Repurchase payments—Liens and claims.** All repurchase payments to retailers and sellers made pursuant to RCW 19.98.010 shall be less amounts

owed on any lien or claim then outstanding upon such items covered by this section. Any wholesaler, manufacturer, or distributor making repurchase payments covered by this chapter to any retailer or seller shall satisfy such secured liens or claims pursuant to chapter [article] 62A.9 RCW less any interest owed to the lienholder arising from the financing of such items which shall be paid to any such secured lienholder by the retailer or seller. In no case shall the wholesaler, manufacturer, or distributor, in making payments covered by RCW 19.98.010, pay in excess of those amounts prescribed therein. [1975 1st ex.s. c 277 § 2.]

**19.98.030 Prices—How determined.** The prices of farm implements, machinery and repair parts therefor, required to be paid to any retail dealer as provided in RCW 19.98.010 shall be determined by taking one hundred percent of the net cost on farm implements, machinery, and attachments, and eighty-five percent of the current net price of repair parts therefor as shown upon the manufacturer's, wholesaler's, or distributor's price lists or catalogues in effect at the time such contract is canceled or discontinued. [1975 1st ex.s. c 277 § 3.]

**19.98.040 Failure or refusal to make payments—Civil action.** In the event that any manufacturer, wholesaler, or distributor of farm machinery, farm implements, and repair parts therefor, upon cancellation or discontinuation of a contract by either a retailer or a manufacturer, wholesaler, or distributor, fails or refuses to make payment to such dealer as is required by RCW 19.98.010, such manufacturer, wholesaler, or distributor shall be liable in a civil action to be brought by such retailer for such payments as are required by RCW 19.98.010. [1975 1st ex.s. c 277 § 4.]

**19.98.900 Effective date—1975 1st ex.s. c 277.** This act shall take effect on January 1, 1976. [1975 1st ex.s. c 277 § 6.]

**19.98.910 Severability—1975 1st ex.s. c 277.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 277 § 7.]

### Chapter 19.100

#### FRANCHISE INVESTMENT PROTECTION

##### Sections

- 19.100.010 Definitions.
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- 19.100.230 Referral of evidence to attorney general or prosecuting attorney.
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- 19.100.260 Applicability of administrative procedure act.
- 19.100.270 Administrator of securities.
- 19.100.900 Chapter applicable to existing and future franchises and contracts.
- 19.100.910 Chapter cumulative and nonexclusive.
- 19.100.920 Effective date—1971 ex.s. c 252.
- 19.100.930 Severability—1971 ex.s. c 252.
- 19.100.931 Severability—1972 ex.s. c 116.
- 19.100.940 Short title.

**19.100.010 Definitions.** When used in this chapter, unless the context otherwise requires:

(1) "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communication media published in connection with an offer or sale of a franchise.

(2) "Community interest" means a continuing financial interest between the franchisor and franchisee in the operation of the franchise business.

(3) "Director" means the director of department of motor vehicles.

(4) "Franchise" means an oral or written contract or agreement, either expressed or implied, in which a person grants to another person, a license to use a trade name, service mark, trade mark, logotype or related characteristic in which there is a community interest in the business of offering, selling, distributing goods or services at wholesale or retail, leasing, or otherwise and in which the franchisee is required to pay, directly or indirectly, a franchise fee: *Provided*, That none of the following shall be construed as a franchise within the meaning of this chapter:

(a) The payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring such credit card or any transaction relating to a bank credit card plan;

(b) Actions or transactions otherwise permitted, prohibited or regulated under laws administered by the insurance commissioner of this state;

(c) Any motor vehicle dealer franchise subject to the provisions of chapter 46.70 RCW

(5) "Bank credit card plan" means a credit card plan in which the issuer of credit cards as defined by \*RCW 9.26A.010(1) is a national bank, state bank, trust company or any other banking institution subject to the supervision of the supervisor of banking of this state or any parent or subsidiary of such bank.

(6) "Franchisee" means a person to whom a franchise is offered or granted.

(7) "Franchisor" means a person who grants a franchise to another person.

(8) "Area franchise" means any contract or agreement between a franchisor or subfranchisor whereby the subfranchisor is granted the right to sell or negotiate the sale of franchises in the name or on behalf of the franchisor.

(9) "Subfranchisor" means a person to whom an area franchise is granted.

(10) "Franchise broker or selling agent" means a person who directly or indirectly engages in the sale of franchises.

(11) "Franchise fee" means any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into a business or to continue a business under a franchise agreement, including, but not limited to, the payment either in lump sum or by installments of an initial capital investment fee, any fee or charges based upon a percentage of gross or net sales whether or not referred to as royalty fees, any payment for the mandatory purchase of goods or services or any payment for goods or services available only from the franchisor, or any training fees or training school fees or charges; however, the following shall not be considered payment of a franchise fee: (a) the purchase or agreement to purchase goods at a bona fide wholesale price; (b) the purchase or agreement to purchase goods by consignment; if, and only if the proceeds remitted by the franchisee from any such sale shall reflect only the bona fide wholesale price of such goods; (c) a bona fide loan to the franchisee from the franchisor; (d) the purchase or agreement to purchase goods at a bona fide retail price subject to a bona fide commission or compensation plan that in substance reflects only a bona fide wholesale transaction; (e) the purchase or lease or agreement to purchase or lease supplies or fixtures necessary to enter into the business or to continue the business under the franchise agreement at their fair market or rental value; (f) the purchase or lease or agreement to purchase or lease real property necessary to enter into the business or to continue the business under the franchise agreement at the fair market or rental value; (g) amounts paid for trading stamps redeemable in cash only; (h) amounts paid for trading stamps to be used as incentives only and not to be used in, with, or for the sale of any goods.

(12) "Person" means a natural person, corporation, partnership, trust, or other entity and in the case of an entity, it shall include any other entity which has a majority interest in such an entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each such entity.

(13) "Publish" means publicly to issue or circulate by newspaper, mail, radio, or television or otherwise to disseminate to the public.

(14) "Sale or sell" includes every contract of sale, contract to sell, or disposition of a franchise.

(15) "Offer or offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a franchise or an interest in a franchise. [1973 1st ex.s. c 33 § 3; 1972 ex.s. c 116 § 1; 1971 ex.s. c 252 § 1.]

\*Reviser's note: "RCW 9.26A.010(1)" was repealed by 1975 1st ex.s. c 260 § 9A.92.010.

Emergency—Effective date—1972 ex.s. c 116: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on May 1, 1972." [1972 ex.s. c 116 § 17.]

**19.100.020 Unlawful to sell or offer to sell franchise if unregistered or not exempt.** It is unlawful for any franchisor or subfranchisor to sell or offer to sell any franchise in this state unless the offer of the franchise has been registered under this chapter or exempted under RCW 19.100.030. [1971 ex.s. c 252 § 2.]

**19.100.030 Exemptions from registration requirements.** The registration requirements of this chapter shall not apply to:

(1) A sale or transfer of a franchise by a franchisee whether voluntary or involuntary if such sale is an isolated sale.

(2) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(3) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer or to a broker dealer where the purchaser is acting for itself or in some fiduciary capacity.

(4) Any franchisor:

(a) Who has disclosed in writing to each prospective franchisee, at least forty-eight hours prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least forty-eight hours prior to the receipt of any consideration, the following information:

(i) The name of the franchisor and the name under which the franchisor is doing or intends to do business.

(ii) The franchisor's principal business address and the name and address of his agent in the state of Washington authorized to receive process.

(iii) The business form of the franchisor whether corporate, partnership, or otherwise.

(iv) A statement of when, where, and how long the franchisor has:

(A) Conducted a business of the type to be operated by the franchisees;

(B) Has granted franchises for such business; and

(C) Has granted franchises in other lines of business.

(v) A copy of the typical franchise contract or agreement proposed for use including all amendments thereto.

(vi) A statement of the franchise fee charged, the proposed application of the proceeds of such fee by the franchisor, and the formula by which the amount of the fee is determined if the fee is not the same in all cases; a statement indicating whether and under what conditions all or part of the initial franchise fee may be returned to the franchisee; and a statement of the estimated total investment to be made by the franchisee for:

(A) The initial franchise fee and other fees, whether payable in one sum or in installments;

(B) Fixed assets other than real property and leases for real property, whether or not financed by contract or installment purchase, leasing or otherwise;

(C) Working capital, deposits and prepaid expenses;

(D) Real property, whether or not financed by contract or installment purchase or otherwise, and leases for real property; and

(E) All other goods and services which the franchisee will be required to purchase or lease.

(vii) A statement describing a payment of fees other than franchise fees that the franchisee is required to pay to the franchisor including royalties and payments or fees which the franchisor collects in whole or in part on behalf of a third party or parties.

(viii) A statement of the conditions under which the franchise agreement may be terminated or renewed or renewal refused.

(ix) A statement of the conditions under which the franchise may be sold, transferred, or assigned.

(x) A statement of the conditions imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee is required to purchase services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchise business from the franchisor or his designee together with a statement of whether and of the means by which the franchisor derives income from such purchases.

(xi) A statement of any restriction or condition imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee is limited and/or required in the goods or services offered by him.

(xii) A statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or his agent or affiliate.

(xiii) A statement of any intent of the franchisor to sell, assign, or discount to a third party any note, contract, or other obligation of the franchisee in whole or in part.

(xiv) A copy of any statement of estimated or projected franchisee sales or earnings prepared for presentation to prospective franchisees or other persons together with a statement immediately following such statement setting forth the data upon which the estimations or projections are based and explaining clearly the manner and extent to which such data relates to the actual operations of businesses conducted by the franchisor or its franchisees.

(xv) A statement of business failures of franchisees, resales to the franchisor, sales of the franchise to others,

and transfers in the state of Washington during the two year period preceding the date of the statement.

(xvi) A statement describing the training program, supervision, and assistance the franchisor has and will provide the franchisee.

(xvii) A statement as to whether or not franchisees are granted a specific area or territory within which the franchisor agrees not to operate or grant additional franchises for the operation of the franchise business or in which the franchisor will operate or grant franchises for the operation of no more than a specified number of additional franchise businesses.

(xviii) A list of the names, addresses and telephone numbers of all operating franchise businesses under franchise agreement with the franchisor located in the state of Washington.

(xix) A statement explaining the terms and effects of any covenant not to compete which is or will be included in the franchise or other agreement to be executed by the franchisee.

(xx) A statement setting forth such additional information and such comments and explanations relative to the information contained in the disclosure statement as the franchisor may desire to present; and

(b) Who either:

(i) (A) Has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars or who has a net worth, according to its most recent audited financial statement, of not less than one million dollars and is at least eighty percent owned by a corporation which has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars; and

(B) Has had at least twenty-five franchisees conducting business at all times during the five-year period immediately preceding the offer or sale or has conducted business which is the subject of the franchise continuously for not less than five years preceding the offer or sale or if any corporation which owns at least eighty percent of the franchisor, has had at least twenty-five franchises [franchisees] conducting business at all times during the five-year period immediately preceding the offer or sale or such corporation has conducted business which is the subject of the franchise continuously for not less than five years preceding the offer or sale; and

(C) Requires an initial investment by the franchisee of more than one hundred thousand dollars; or

(ii) (A) has and is offering for sale fewer than ten franchises within the state of Washington under franchise agreement; and

(B) does not advertise, using radio, television, newspaper, magazine, billboard, or other advertising medium the principal office of which is located in the state of Washington or Oregon, concerning the sale of or offer to sell franchises; or

(iii) (A) does not charge a franchise fee, as defined in RCW 19.100.010(11), in excess of fifteen hundred dollars per year, and

(B) does not advertise, using radio, television, newspaper, magazine, billboard, or other advertising medium, the principal office of which is located in the state of

Washington or Oregon, concerning the sale of or offer to sell franchises; and

(C) who has not been found by a court of competent jurisdiction to have been in violation of this chapter, chapter 19.86 RCW, or any of the various federal statutes dealing with the same or similar matters, within seven years of any sale or offer to sell franchise business under franchise agreement in the state of Washington.

(5) Neither the registration requirements nor the provisions of RCW 19.100.180(2), as now or hereafter amended, shall apply to any franchisor:

(a) Who meets the tests and requirements set forth in subsections (4)(a), (4)(b)(i)(A), 4(b)(i)(B), and 4(c) of this section; and

(b) Who is engaged in the business of renting or leasing motor vehicles through an interdependent system of direct and franchised operations in interstate commerce in twenty or more states; and

(c) Who is subject to the jurisdiction of the federal trade commission and the federal anti-trust laws.

Any franchisor or subfranchisor who claims an exemption under subsection 4(a) and 4(b)(i) of this section shall file with the director a statement giving notice of such claim and setting forth the name and address of franchisor or subfranchisor and the name under which the franchisor or subfranchisor is doing or intends to do business. [1972 ex.s. c 116 § 2; 1971 ex.s. c 252 § 3.]

**19.100.040 Application for registration—Contents—Filing.** The application for registration of the offer, signed by the franchisor, subfranchisor, or by any person on whose behalf the offering is to be made, must be filed with the director and shall contain:

(1) The name of the franchisor and the name under which the franchisor is doing or intends to do business.

(2) The franchisor's principal business address and the name and address of his agent in the state of Washington authorized to receive process.

(3) The business form of the franchisor whether corporate, partnership, or otherwise.

(4) Such other information concerning the identity and business experience of persons affiliated with the franchisor including franchise brokers as the director may by rule prescribe.

(5) A statement whether any person identified in the application for registration:

(a) Has been found guilty of a felony or held liable in a civil action by final judgment if such civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property, within ten years of the date of such application; or

(b) Is subject to any currently effective order of the securities and exchange commission or the securities administrator of any state denying registration to or revoking or suspending the registration of such person as a securities broker or dealer or investment advisor or is subject to any currently effective order of any national security association or national securities exchange (as defined in the Securities & Exchange Act of 1934) suspending or expelling such person from membership of such association or exchange; or

(c) Is subject to any currently effective order or ruling of the Federal Trade Commission pertaining to any franchise granted by franchisor or is subject to any currently effective order relating to business activity as a franchisor as a result of an action brought by the attorney general's office or by any public agency or department.

Such statement shall set forth the court, the date of conviction or judgment, any penalty imposed, or damages assessed or the date, nature, and issue of such order.

(6) A statement of when, where, and how long the franchisor has:

(a) Conducted a business of the type to be operated by the franchisees;

(b) Has granted franchises for such business; and

(c) Has granted franchises in other lines of business.

(7) A financial statement of the franchisor. The director may describe:

(a) Form and content of the financial statements required under this law;

(b) The circumstances under which consolidated financial statements can be filed; and

(c) The circumstances under which financial statements shall be audited by independent, certified public accountants.

(8) A copy of the typical franchise contract or agreement proposed for use including all amendments thereto.

(9) A statement of the franchise fee charged, the proposed application of the proceeds of such fee by the franchisor, and the formula by which the amount of the fee is determined if the fee is not the same in all cases; a statement indicating whether and under what conditions all or part of the initial franchise fee may be returned to the franchisee; and a statement of the estimated total investment to be made by the franchisee for:

(a) The initial franchise fee and other fees, whether payable in one sum or in installments;

(b) Fixed assets other than real property and leases for real property, whether or not financed by contract or installment purchase, leasing or otherwise;

(c) Working capital, deposits and prepaid expenses;

(d) Real property, whether or not financed by contract or installment purchase or otherwise, and leases for real property; and

(e) All other goods and services which the franchisee will be required to purchase or lease.

(10) A statement describing a payment of fees other than franchise fees that the franchisee is required to pay to the franchisor including royalties and payments or fees which the franchisor collects in whole or in part on behalf of a third party or parties.

(11) A statement of the conditions under which the franchise agreement may be terminated or renewed or renewal refused.

(12) A statement of the conditions under which the franchise may be sold, transferred, or assigned.

(13) A statement of the conditions imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee is required to purchase services, supplies,



products, fixtures, or other goods relating to the establishment or operation of the franchise business from the franchisor or his designee together with a statement of whether and of the means by which the franchisor derives income from such purchases.

(14) A statement of any restriction or condition imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee is limited and/or required in the goods and services offered by him.

(15) A statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or his agent or affiliate.

(16) A statement of any intent of the franchisor to sell, assign, or discount to a third party any note, contract, or other obligation of the franchisee in whole or in part.

(17) A copy of any statement of estimated or projected franchisee sales or earnings prepared for presentation to prospective franchisees or other persons, together with a statement immediately following such statement setting forth the data upon which the estimations or projections are based and explaining clearly the manner and extent to which such data relates to the actual operations of businesses conducted by the franchisor or its franchisees.

(18) A statement of business failures of franchisees, resales to the franchisor, sales of the franchise to others, and transfers in the state of Washington during the two year period preceding the date of the statement.

(19) A statement describing the training program, supervision, and assistance the franchisor has and will provide the franchisee.

(20) Such other information as the director may reasonably require.

(21) A list of the names, addresses and telephone numbers of all operating franchise businesses under franchise agreement with the franchisor located in the state of Washington.

(22) A statement explaining the terms and effects of any covenant not to compete which is or will be included in the franchise or other agreement to be executed by the franchisee.

(23) A statement setting forth such additional information and such comments and explanations relative to the information contained in the disclosure statement as the franchisor may desire to present.

(24) When the person filing the application for registration is a subfranchisor, the application shall also include the same information concerning the subfranchisor as is required from the franchisor pursuant to this section. [1972 ex.s. c 116 § 3; 1971 ex.s. c 252 § 4.]

**19.100.050 Escrow or impoundment of franchise fees as registration condition—Rules or orders—Procedure to rescind.** The director may by rule or order require as a condition to the effectiveness of the registration the escrow or impound of franchise fees if he finds that such requirement is necessary and appropriate to protect prospective franchisees. At any time after the issuance of such rule or order under this section the franchisor may in writing request the rule or order be

rescinded. Upon receipt of such a written request, the matter shall be set down for hearing to commence within fifteen days after such receipt unless the person making the request consents to a later date. After such hearing, which shall be conducted in accordance with the provisions of the administrative procedure act, chapter 34.04 RCW, the director shall determine whether to affirm and to continue or to rescind such order and the director shall have all powers granted under such act. [1972 ex.s. c 116 § 4; 1971 ex.s. c 252 § 5.]

**19.100.060 Registration statement—Effective, when.** If no stop order is in effect and no proceeding is pending under RCW 19.100.120, a registration statement becomes effective at 3:00 P.M. Pacific Standard Time on the afternoon of the fifteenth business day after the filing of the registration statement or the last amendment or at such earlier time as the director determines. [1971 ex.s. c 252 § 6.]

**19.100.070 Registration—Duration—Renewal—Supplemental report.** (1) A franchise offering shall be deemed duly registered for a period of one year from the effective date of registration unless the director specifies a different period.

(2) Registration of a franchise offer may be renewed for additional periods of one year each, unless the director by rule or order specifies a different period, by filing with the director no later than fifteen business days prior to the expiration thereof a renewal application containing such information as the director may require to indicate any substantial changes in the information contained in the original application for a renewal application and payment of the proscribed fee.

(3) If a material adverse change in the condition of the franchisor or the subfranchisor should occur during any year, a supplemental report shall be filed as soon as reasonably possible and in any case, before the further sale of any franchise. [1972 ex.s. c 116 § 5; 1971 ex.s. c 252 § 7.]

**19.100.080 Copies of disclosure materials and supplemental reports to be furnished.** Any person offering for sale or selling a franchise within this state, whether or not one or more franchises will be located within this state, must present to the prospective franchisee or his representative, at least forty-eight hours prior to the sale of the franchise, copies of the materials specified in RCW 19.100.030(4)(a) and all supplemental reports of the franchisor and the subfranchisor on file with the director. [1972 ex.s. c 116 § 6; 1971 ex.s. c 252 § 8.]

**19.100.090 Filings, registration or finding of director—Construction.** (1) Neither (a) the fact that application for registration under this law has been filed nor

(b) the fact that such registration has become effective constitutes a finding by the director that any document filed under this law is true, complete, or not misleading. Neither any such fact or the fact that an exemption is available for a transaction means that the director has passed in any way on the merit or qualifications of or



recommended or given approval to any person, franchise, or transaction.

(2) It is unlawful to make or cause to be made to any prospective purchaser or offeree any representation inconsistent with this section. [1971 ex.s. c 252 § 9.]

**19.100.100 Advertisements—Copy to be filed.** No persons shall publish in this state any advertisements offering a franchise subject to the registration requirements of this law unless a true copy of the advertisement has been filed in the office of the director at least seven days prior to the publication or such shorter period as the director by rule or order may allow. [1971 ex.s. c 252 § 10.]

**19.100.110 Advertisements—False or misleading—Notice—Procedure.** No person shall publish in this state any advertisement concerning a franchise subject to the registration requirements of this chapter after the director finds that the advertisement contains any statements that are false or misleading or omits to make any statement necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading and so notifies the person in writing. Such notification may be given summarily without notice or hearing. At any time after the issuance of a notification under this section the person desiring to use the advertisement may in writing request the order be rescinded. Upon receipt of such a written request, the matter shall be set down for hearing to commence within fifteen days after such receipt unless the person making the request consents to a later date. After such hearing, which shall be conducted in accordance with the provisions of the administrative procedure act, chapter 34.04 RCW, the director shall determine whether to affirm and to continue or to rescind such order and the director shall have all powers granted under such act. [1972 ex.s. c 116 § 7; 1971 ex.s. c 252 § 11.]

**19.100.120 Registration statement—Stop order—Grounds.** The director may issue a stop order denying effectiveness to or suspending or revoking the effectiveness of any registration statement if he finds that the order is in the public interest and that:

(1) The registration statement as of its effective date, or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was in the light of the circumstances under which it was made false or misleading with respect to any material fact;

(2) Any provision of this chapter or any rule or order or condition lawfully imposed under this chapter has been violated in connection with the offering by:

(a) The person filing the registration statement but only if such person is directly or indirectly controlled by or acting for the franchisor; or

(b) The franchisor, any partner, officer or director of a franchisor, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling or controlled by the franchisor.

(3) The franchise offering registered or sought to be registered is the subject of a permanent or temporary

injunction of any court of competent jurisdiction entered under any federal or state act applicable to the offering but the director may not:

(a) Institute a proceeding against an effective registration statement under this clause more than one year from the date of the injunctive relief thereon unless the injunction is thereafter violated; and

(b) enter an order under this clause on the basis of an injunction entered under any other state act unless that order or injunction is based on facts that currently constitute a ground for stop order under this section;

(4) A franchisor's enterprise or method of business includes or would include activities which are illegal where performed;

(5) The offering has worked or tended to work a fraud upon purchasers or would so operate;

(6) The applicant has failed to comply with any rule or order of the director issued pursuant to RCW 19.100.050.

(7) The applicant or registrant has failed to pay the proper registration fee but the director may enter only a denial order under this subsection and he shall vacate such order when the deficiency has been corrected. [1972 ex.s. c 116 § 8; 1971 ex.s. c 252 § 12.]

**19.100.130 Registration statement—Stop order—Notice—Hearing—Modification or vacation of order.** Upon the entry of a stop order under any part of RCW 19.100.120, the director shall promptly notify the applicant that the order has been entered and that the reasons therefor and that within fifteen days after receipt of a written request, the matter will be set down for hearing. If no hearing is requested within fifteen days and none is ordered by the director, the director shall enter his written findings of fact and conclusions of law and the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director after notice of an opportunity for hearings to the issuer and to the applicant or registrant shall enter his written findings of fact and conclusions of law and may modify or vacate the order. The director may modify or vacate a stop order if he finds that the conditions which prompted his entry have changed or that it is otherwise in the public interest to do so. [1971 ex.s. c 252 § 13.]

**19.100.140 Registration required—Franchise brokers or selling agents.** (1) It is unlawful for any person to offer to sell or sell a franchise which is subject to the registration requirements of RCW 19.100.040 unless he is registered under this chapter. It is unlawful for any franchisor, subfranchisor, or franchisee, except if the transaction is exempt under RCW 19.100.030 to employ a franchise broker or selling agent unless he is registered.

(2) The franchise broker or selling agent may apply for registration by filing with the director an application together with a consent to service of process in such form as the director shall prescribe and payment of the fee prescribed in RCW 19.100.240.

(3) The application shall contain whatever information the director requires concerning such matters as:

- (a) The applicant's form and place of organization.
- (b) The applicant's proposed method of doing business.
- (c) The qualifications and business history of the applicant.
- (d) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and
- (e) The applicant's financial condition and history. [1972 ex.s. c 116 § 9; 1971 ex.s. c 252 § 14.]

**19.100.150 Records and accounts—Reports.** Every person offering franchises for sale shall at all times keep and maintain a complete set of books, records, and accounts of such and the disposition of the proceeds thereof and shall thereafter at such times as are required by the director make and file in the office of the director a report setting forth the franchises sold by it, the proceeds derived therefrom, and the disposition thereof. [1971 ex.s. c 252 § 15.]

**19.100.160 Application of chapter—Jurisdiction—Service of process—Consent.** Any person who is engaged or hereafter engaged directly or indirectly in the sale or offer to sell a franchise or in business dealings concerning a franchise, either in person or in any other form of communication, shall be subject to the provisions of this chapter, shall be amenable to the jurisdiction of the courts of this state and shall be amenable to the service of process under RCW 4.28.180, 4.28.185 and 19.86.160. Every applicant for registration of a franchise under this law (by other than a Washington corporation) shall file with the director in such form as he by rule prescribed, an irrevocable consent appointing the director or his successor in office to be his attorney, to receive service or any lawful process in any noncriminal suit, action, or proceeding against him or his successors, executor, or administrator which arises under this law or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing consent. A person who has filed such a consent in connection with a previous registration under this law need not file another. Service may be made by leaving a copy of the process in the office of the director but it is not as effective unless:

- (1) The plaintiff, who may be the director, in a suit, action, or proceeding instituted by him forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his last address on file with the director; and
- (2) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further times the court allows. [1971 ex.s. c 252 § 16.]

**19.100.170 Violations.** It is unlawful for any person in connection with the offer, sale, or purchase of any franchise directly or indirectly:

- (1) To make any untrue statement of a material fact in any application, notice, or report filed with the director under this law or wilfully to omit to state in any

application, notice or report, any material fact which is required to be stated therein or fails to notify the director of any material change as required by RCW 19.100.070(3).

- (2) To sell or offer to sell a franchise in this state by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made not misleading.

- (3) To employ any device, scheme, or artifice to defraud.

- (4) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

- (5) To violate any order of the director. [1971 ex.s. c 252 § 17.]

**19.100.180 Relation between franchisor and franchisee—Rights and prohibitions.** Without limiting the other provisions of this chapter, the following specific rights and prohibitions shall govern the relation between the franchisor or subfranchisor and the franchisees:

- (1) The parties shall deal with each other in good faith.

- (2) For the purposes of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition and therefore unlawful and a violation of this chapter for any person to:

- (a) Restrict or inhibit the right of the franchisees to join an association of franchisees.

- (b) Require a franchisee to purchase or lease goods or services of the franchisor or from approved sources of supply unless and to the extent that the franchisor satisfies the burden of proving that such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds, and do not substantially affect competition: *Provided*, That this provision shall not apply to the initial inventory of the franchise. In determining whether a requirement to purchase or lease goods or services constitutes an unfair or deceptive act or practice or an unfair method of competition the courts shall be guided by the decisions of the courts of the United States interpreting and applying the anti-trust laws of the United States.

- (c) Discriminate between franchisees in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other business dealing, unless and to the extent that the franchisor satisfies the burden of proving that any classification of or discrimination between franchisees is reasonable, is based on franchises granted at materially different times and such discrimination is reasonably related to such difference in time or on other proper and justifiable distinctions considering the purposes of this chapter, and is not arbitrary.

- (d) Sell, rent, or offer to sell to a franchisee any product or service for more than a fair and reasonable price.

- (e) Obtain money, goods, services, anything of value, or any other benefit from any other person with whom

the franchisee does business on account of such business unless such benefit is disclosed to the franchisee.

(f) If the franchise provides that the franchisee has an exclusive territory, which exclusive territory shall be specified in the franchise agreement, for the franchisor or subfranchisor to compete with the franchisee in an exclusive territory or to grant competitive franchises in the exclusive territory area previously granted to another franchisee.

(g) Require franchisee to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter.

(h) Impose on a franchisee by contract, rule, or regulation, whether written or oral, any standard of conduct unless the person so doing can sustain the burden of proving such to be reasonable and necessary.

(i) Refuse to renew a franchise without fairly compensating the franchisee for the fair market value, at the time of expiration of the franchise, of the franchisee's inventory, supplies, equipment, and furnishings purchased from the franchisor, and good will, exclusive of personalized materials which have no value to the franchisor, and inventory, supplies, equipment and furnishings not reasonably required in the conduct of the franchise business: *Provided*, That compensation need not be made to a franchisee for good will if (i) the franchisee has been given one year's notice of nonrenewal and (ii) the franchisor agrees in writing not to enforce any covenant which restrains the franchisee from competing with the franchisor: *Provided further*, That a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor.

(j) To terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include, without limitation, the failure of the franchisee to comply with lawful material provisions of the franchise or other agreement between the franchisor and the franchisee and to cure such default after being given written notice thereof and a reasonable opportunity, which in no event need be more than thirty days, to cure such default, or if such default cannot reasonably be cured within thirty days, the failure of the franchisee to initiate within thirty days substantial and continuing action to cure such default: *Provided*, That a franchisor may terminate a franchise without giving prior notice or opportunity to cure a default if the franchisee (i) is adjudicated a bankrupt or insolvent; (ii) makes an assignment for the benefit of creditors or similar disposition of the assets of the franchise business; (iii) voluntarily abandons the franchise business; or (iv) is convicted of or pleads guilty or no contest to a charge of violating any law relating to the franchise business. Upon termination for good cause, the franchisor shall purchase from the franchisee at a fair market value at the time of termination, the franchisee's inventory and supplies, exclusive of (i) personalized materials which have no value to the franchisor; (ii) inventory and supplies not reasonably required in the conduct of the franchise business; and (iii), if the franchisee is to retain control of the premises of the franchise business, any inventory and supplies not purchased from the franchisor

or on his express requirement: *Provided*, That a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor. [1973 1st ex.s. c 33 § 4; 1972 ex.s. c 116 § 10; 1971 ex.s. c 252 § 18.]

**19.100.190 Unfair or deceptive acts—Suits for damages—Violations of other acts, use in evidence.** (1) The commission of any unfair or deceptive acts or practices or unfair methods of competition prohibited by RCW 19.100.180 as now or hereafter amended shall constitute an unfair or deceptive act or practice under the provisions of chapter 19.86 RCW.

(2) Any person who sells or offers to sell a franchise in violation of this chapter shall be liable to the franchisee or subfranchisor who may sue at law or in equity for damages caused thereby for rescission or other relief as the court may deem appropriate. In the case of a violation of RCW 19.100.170 rescission is not available to the plaintiff if the defendant proves that the plaintiff knew the facts concerning the untruth or omission or that the defendant exercised reasonable care and did not know or if he had exercised reasonable care would not have known of the untruth or omission.

(3) The suit authorized under subsection (2) of this section may be brought to recover the actual damages sustained by the plaintiff and the court may in its discretion increase the award of damages to an amount not to exceed three times the actual damages sustained: *Provided*, That the prevailing party may in the discretion of the court recover the costs of said action including a reasonable attorneys' fee.

(4) Any person who becomes liable to make payments under this section may recover contributions as in cases of contracts from any persons who, if sued separately, would have been liable to make the same payment.

(5) A final judgment, order, or decree heretofore or hereafter rendered against a person in any civil, criminal, or administrative proceedings under the United States anti-trust laws, under the Federal Trade Commission Act, under the Washington State Consumer Protection Act, or this chapter shall be regarded as evidence against such persons in any action brought by any party against such person under subsections (1) and (2) of this section as to all matters which said judgment or decree would be an estoppel between the parties thereto. [1972 ex.s. c 116 § 11; 1971 ex.s. c 252 § 19.]

**19.100.200 Pendency of other proceedings tolls limitation of action.** The pendency of any civil, criminal, or administrative proceedings against a person brought by the federal or Washington state governments or any of their agencies under the anti-trust laws, the Federal Trade Commission Act, the Consumer Protection Act, or any federal or state act related to anti-trust laws or to franchising, or under this chapter shall toll the limitation of this action if the action is then instituted within one year after the final judgment or order in such proceedings: *Provided*, That said limitation of actions shall in any case toll the law so long as there is actual concealment on the part of the person. [1972 ex.s. c 116 § 12; 1971 ex.s. c 252 § 20.]

**19.100.210 Violations—Injunctions—Assurance of discontinuance—Civil and criminal penalties—Chapter nonexclusive.** (1) The attorney general may bring an action in the name of the state against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful and the prevailing party may in the discretion of the court recover the costs of such action including a reasonable attorneys' fee.

(2) Every person who shall violate the terms of any injunction issued as in this chapter provided shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars.

Every person who violates RCW 19.100.020, 19.100.080, 19.100.150 and 19.100.170 as now or hereafter amended shall forfeit a civil penalty of not more than two thousand dollars for each violation.

For the purpose of this section the superior court issuing an injunction shall retain jurisdiction and the cause shall be continued and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties.

In the enforcement of this chapter, the attorney general may accept an assurance of discontinuance with the provisions of this chapter from any person deemed by the attorney general in violation hereof. Any such assurance shall be in writing, shall state that the person giving such assurance does not admit to any violation of this chapter or to any facts alleged by the attorney general, and shall be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston county. Proof of failure to comply with the assurance of discontinuance shall be prima facie evidence of a violation of this chapter.

(3) Any person who wilfully violates any provision of this chapter or who wilfully violates any rule or order under this chapter shall upon conviction be fined not more than five thousand dollars or imprisoned for not more than ten years or both, but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five years after the alleged violation.

(4) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law. [1972 ex.s. c 116 § 13; 1971 ex.s. c 252 § 21.]

**19.100.220 Exceptions or exemptions—Burden of proof—Waivers of compliance void.** In any proceeding under this chapter, the burden of proving an exception or an exemption from definition is upon the person claiming it. Any condition, stipulation or provision purporting to bind any person acquiring a franchise at the time of entering into a franchise or other agreement to waive compliance with any provision of this chapter or any rule or order hereunder is void. [1972 ex.s. c 116 § 14; 1971 ex.s. c 252 § 22.]

**19.100.230 Referral of evidence to attorney general or prosecuting attorney.** The director may refer such

evidence as may be available concerning violations of this chapter or any rule or order hereunder to the attorney general or the proper prosecuting attorney who may in his discretion with or without such a reference institute the appropriate criminal proceeding under this chapter. [1971 ex.s. c 252 § 23.]

**19.100.240 Fees.** The director shall charge and collect fees fixed by this section. All fees collected under this chapter shall be deposited in the state treasury and shall not be refundable except as herein provided:

(1) The fee for filing an application for registration on the sale of franchise under RCW 19.100.040 is five hundred dollars;

(2) The fee for filing an application for renewal of a registration under RCW 19.100.070 is one hundred dollars;

(3) The fee for filing an amendment to the application filed under RCW 19.100.040 is one hundred dollars;

(4) The fee for registration of a franchise broker or selling agent shall be fifty dollars for original registration and twenty-five dollars for each annual renewal. [1971 ex.s. c 252 § 24.]

**19.100.250 Powers of director as to rules, forms, orders and defining terms—Interpretive opinions.** The director may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this chapter including rules and forms governing applications and reports and defining any terms whether or not used in this chapter insofar as the definitions are consistent with this chapter. The director in his discretion may honor requests from interested persons for interpretive opinions. [1972 ex.s. c 116 § 15; 1971 ex.s. c 252 § 25.]

**19.100.260 Applicability of administrative procedure act.** The Administrative Procedure Act, chapter 34.04 RCW, shall wherever applicable herein govern the rights, remedies, and procedures respecting the administration of this chapter. [1971 ex.s. c 252 § 26.]

**19.100.270 Administrator of securities.** The director shall appoint a competent person to administer this chapter who shall be designated administrator of securities. The director shall delegate to the administrator such powers, subject to the authority of the director, as may be necessary to carry out the provisions of this chapter. The administrator shall hold office at the pleasure of the director. [1971 ex.s. c 252 § 27.]

**19.100.900 Chapter applicable to existing and future franchises and contracts.** The provisions of this chapter shall be applicable to all franchises and contracts existing between franchisors and franchisees and to all future franchises and contracts. [1971 ex.s. c 252 § 28.]

**19.100.910 Chapter cumulative and nonexclusive.** The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law. [1971 ex.s. c 252 § 29.]

**19.100.920 Effective date**—1971 ex.s. c 252. This act shall become effective May 1, 1972: *Provided*, That the director is authorized and empowered to undertake and perform duties and conduct activities necessary for the implementation of this act prior to that date. [1971 ex.s. c 252 § 30.]

**19.100.930 Severability**—1971 ex.s. c 252. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, or any section, provisions, or part thereof not adjudged invalid or unconstitutional. [1971 ex.s. c 252 § 31.]

**19.100.931 Severability**—1972 ex.s. c 116. If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1972 ex.s. c 116 § 16.]

**19.100.940 Short title.** This chapter shall be known and designated as the "Franchise Investment Protection Act". [1971 ex.s. c 252 § 32.]

### Chapter 19.102 CHAIN DISTRIBUTOR SCHEMES

#### Sections

- 19.102.010 Definitions.  
19.102.020 Chain distributor schemes prohibited—Unfair practice.

**19.102.010 Definitions.** (1) "Chain distributor scheme" is a sales device whereby a person, under a condition that he make an investment, is granted a license or right to recruit for consideration one or more additional persons who are also granted such license or right upon condition of making an investment, and may further perpetuate the chain of persons who are granted such license or right upon such condition. A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the above license or right to recruit or the receipt of profits therefrom, does not change the identity of the scheme as a chain distributor scheme.

(2) "Person" means a natural person, corporation, partnership, trust, or other entity and in the case of an entity, it shall include any other entity which has a majority interest in such an entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each such entity.

(3) "Investment" is any acquisition, for a consideration other than personal services, of personal property, tangible or intangible, for profit or business purposes, and includes, without limitation, franchises, business opportunities, services and inventory for resale. It does not include sales demonstration equipment and materials, furnished at cost for use in making sales and not for resale. [1973 1st ex.s. c 33 § 1.]

**19.102.020 Chain distributor schemes prohibited—Unfair practice.** No person shall promote, offer or grant

participation in a chain distributor scheme. Any violation of this chapter shall be construed for purposes of the application of the Consumer Protection Act, chapter 19.86 RCW, to constitute an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce. [1973 1st ex.s. c 33 § 2.]

### Chapter 19.105 CAMPING CLUBS

#### Sections

- 19.105.010 Definitions.  
19.105.020 Permit for promotion required before selling memberships.  
19.105.030 Application for promotion permit.  
19.105.040 Conditional granting of promotion permit—Impounding proceeds.  
19.105.045 Promotion and selling permit—Duration—Renewal—Fee—Conditions.  
19.105.050 Reserve fund for acquisition of land or improvements.  
19.105.060 Sales and promotion literature, contract forms—Filing.  
19.105.070 Grounds for suspension of promotion permit—Revocation.  
19.105.080 Cancellation of club membership contract.  
19.105.090 Contract voidable, when.  
19.105.100 Prerequisites for granting promotion permit—Conditional permit.  
19.105.110 Management fees or charges—Approval by director—Liability of promoter.  
19.105.120 Selling membership in camping club for which promotion permit not in force prohibited—Exception.  
19.105.130 Application fee—Additional fees.  
19.105.140 Administrative Procedure Act applicable to chapter—Duties of director.  
19.105.150 Camping clubs not considered subdivisions—Powers of cities and towns not impaired.  
19.105.160 Chapter not exclusive.  
19.105.170 Exceptions.  
19.105.180 Effective date of rules and regulations.  
19.105.190 Chapter not applicable to certain camping clubs.  
19.105.200 Violations constitute unfair or deceptive practice.  
19.105.210 Making false or misleading statements prohibited.  
19.105.220 Violations—Penalty—Time limitation.  
19.105.230 Violations—Referral to attorney general or prosecuting attorney—Action by director.  
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**19.105.010 Definitions.** As used in this chapter, the following terms shall have the meanings herein ascribed to them, unless the context clearly requires otherwise:

(1) "Camping club" shall mean any corporation, firm, partnership, association, trust, or organization which:

(a) Is promoted, in whole or in part, for the financial benefit of another person, corporation, firm, partnership, association, trust, or organization; and

(b) Has camping and outdoor recreation as its primary purposes, and which is, or is intended to be, composed of members who have or will have obligated themselves to pay membership fees or other charges entitling them to use club facilities and grounds for camping and outdoor recreation purposes; and

(c) Contains or will contain camping vehicle sites; and

(d) Has legal or equitable title to the land on which the club is located or which leases, or is purchasing

under a real estate contract, the land on which the club is located.

(2) "Camping vehicle site" means a space assigned to a camping club member for an indefinite period of time, or for life, or for a period of longer than one month, and on which site the member is entitled to park or locate a camping vehicle.

(3) "Camping vehicle" means a travel trailer, tent or tent trailer, pick-up camper, or other similar device used for portable housing.

(4) "Person" shall mean any person, firm, corporation, partnership, association, or organization.

(5) "Director" shall mean the director of the department of motor vehicles acting in his capacity as administrator of the Securities Act, chapter 21.20 RCW, as now law or hereafter amended.

(6) "Promoter" shall mean the person or organization having a permit issued by the director to engage in the business of promoting or developing a camping club and having the overall responsibility for the sale of memberships in a camping club. [1972 ex.s. c 106 § 1.]

**19.105.020 Permit for promotion required before selling memberships.** Memberships in a camping club may not be sold unless a permit for promotion has been granted by the director. [1972 ex.s. c 106 § 2.]

**19.105.030 Application for promotion permit.** The application for a promotion permit shall be submitted to the director on a form reasonably prescribed by him. The information required by the director in the application shall be of such a nature as will enable the director to determine the development plan of the applicant and the applicant's financial responsibility and ability to perform, or cause to be performed, the development plan and the contractual obligations which would be due to the members of the club. The application shall include detailed information as to the ownership of and right to use the land on which the club is to be located, including, but not limited to, all of the applicant's transactions or dealings regarding the land. If the director finds that the applicant is financially responsible and has sufficient capital to warrant the promotion of a camping club and has otherwise complied with the provisions of this chapter, then he shall issue a promotion permit. If he finds that the applicant is not financially responsible or has insufficient capital, then he shall either deny the promotion permit or issue a conditional permit pursuant to the provisions of RCW 19.105.040. [1972 ex.s. c 106 § 3.]

**19.105.040 Conditional granting of promotion permit—Impounding proceeds.** If the director finds that the applicant is not financially responsible or that the applicant has insufficient capital, he may grant a promotion permit, conditioned on the applicant agreeing to an impounding of the proceeds from all membership sales and charges on members for a reasonable period of time and until sufficient money has been impounded to adequately capitalize the camping club. The director may, if he finds it reasonable and necessary to the business of the applicant, provide for release to the applicant of a certain percentage of the impounded money. When

sufficient capital is raised and the impound is lifted, the director shall take such measures as are appropriate to assure that the money released from the impound is applied to the camping club. In the event the impounding does not raise sufficient capital to adequately finance the camping club venture, then the members shall receive from the impounded funds the amount they paid in membership fees, less any releases approved by the director. [1972 ex.s. c 106 § 4.]

**19.105.045 Promotion and selling permit—Duration—Renewal—Fee—Conditions.** A permit to promote and sell camping club memberships shall be effective for one year from the date it is issued. The permit may be renewed for additional periods of one year by the payment of a filing fee of fifty dollars and filing with the director, no later than twenty days prior to the expiration thereof, a renewal application containing such information as the director may require to indicate any substantial changes from the information contained in the original application: *Provided*, That the director is not authorized to impose additional material substantive rules upon a permit holder as a condition for the issuance of a renewal permit under this section. A permit to promote and sell camping club memberships for which a renewal application has been regularly filed and the filing fee paid is renewed on the anniversary date of its original issuance unless written notice to the contrary has been mailed to the promoter by the director three days prior to that anniversary date. The director may require the filing of a revised offering circular as a condition of renewal. Further, the director may require the filing of current financial statements within one hundred twenty days of the end of the promoter's fiscal year.

Any permit to promote and sell camping club memberships issued prior to September 8, 1975 shall be subject to the renewal provisions of this section upon the anniversary date of the issuance of the original permit. [1975 1st ex.s. c 150 § 9.]

**19.105.050 Reserve fund for acquisition of land or improvements.** In the event that the development plan for a camping club provides for the camping club owning or acquiring clear title to the land on which the club is to be located, and in the event the plan provides for such ownership or clear title to be purchased from the proceeds from membership sales or fees, then the director may require, in order to protect the interests of the club members, that a reasonable portion of each membership sale or fee be set aside in a reserve fund to be applied toward the purchase price of the land. The director may similarly require the establishment of a reserve fund to cover any improvements on the grounds of a camping club when the improvements, according to the development plan, are to be paid for from the proceeds of membership sales or fees. [1972 ex.s. c 106 § 5.]

**19.105.060 Sales and promotion literature, contract forms—Filing.** The director shall adopt rules and regulations providing for the type and nature of information which a promoter must disclose in its sales and promotion literature and in its membership contract form. The



promoter shall file with and obtain the approval of the director for (1) all advertisements and sales promotion literature, and (2) its contract form dealing with club memberships. Such filing shall be made by certified mail at least fourteen days prior to the first use of the advertisements, promotion literature, or membership contract. Approval shall be deemed to have been granted unless notice to the contrary is received by certified mail within ten days of the filing date. [1972 ex.s. c 106 § 6.]

**19.105.070 Grounds for suspension of promotion permit—Revocation.** Any promotion permit issued by the director may be suspended if the director finds any of the following:

(1) That the promoter's advertising or sales techniques or trade practices have been or are unfair, deceptive, false, or misleading; or

(2) That the promoter has failed to file advertisements or promotion literature, or its membership contract form pursuant to the requirement in RCW 19.105.060; or

(3) That the promoter has failed to comply with the rules and regulations adopted by the director pursuant to the provisions of this chapter; or

(4) That the promoter is not financially responsible or has insufficient capital to warrant its selling memberships; or

(5) That the promoter has failed to comply with local health and land use requirements.

Whenever there exists grounds for suspending a permit under this section, the director may also revoke the permit if he finds revocation necessary in order to adequately protect the interests of the public. [1972 ex.s. c 106 § 7.]

**19.105.080 Cancellation of club membership contract.** Any contract for club membership may be canceled at the option of the member, if the member sends notice of such cancellation by certified mail (return receipt requested) to the promoter and if the notice is posted not later than midnight of the third business day following the day on which the contract was agreed to or signed. In computing the three business days, the day on which the contract was agreed to or signed shall not be included as a "business day", nor shall any Saturday, Sunday, or legal holiday be included.

In the event the contract for club membership is a "retail installment contract" under chapter 63.14 RCW, as now law or hereafter amended, then the information disclosure requirement in RCW 63.14.120(3)(e), as now or hereafter amended, dealing with a one-day option to cancel, shall not apply to the contract. [1972 ex.s. c 106 § 8.]

**19.105.090 Contract voidable, when.** Any contract for club membership shall be voidable at the option of the member, if the contract form has not been filed with the director pursuant to RCW 19.105.060, or if the promoter has failed to comply with the applicable disclosure requirements in its dealings with the member, or if a valid promotion permit was not in existence for the camping club at the time the contract was agreed to. [1972 ex.s. c 106 § 9.]

**19.105.100 Prerequisites for granting promotion permit—Conditional permit.** The director shall not grant any promotion permit until he is furnished certificates by the appropriate local governmental authorities certifying that the applicant has complied with all local, health, planning, and environmental requirements. A conditional permit may be granted pending receipt of such certificates by the director. [1972 ex.s. c 106 § 10.]

**19.105.110 Management fees or charges—Approval by director—Liability of promoter.** During any period of time in which the promoter, his employees, or his agents control the management of a nonprofit camping club, no fees or charges for management services shall be imposed upon or collected from club members, unless (1) a notice of intent to impose and collect such fees or charges, together with an explanation of their purposes and intended application, are submitted to the director for his approval at least sixty days before such fees and charges are to become payable; and (2) the director approves them. The director shall approve any proposed fees or charges which he finds reasonable and shall disapprove any he finds unreasonable. In the event the director does not disapprove any proposed fees or charges within forty-five days after notice is filed with him, then they shall be deemed approved.

The promoter shall be liable to the club members for any money collected in violation of this section. In any action by a member to recover management fees or charges collected in violation of this section, the member, if he prevails, shall be awarded a reasonable attorney's fee.

The term "nonprofit" as used in this section refers to any domestic corporation organized under Title 24 RCW, and any foreign corporation authorized to conduct affairs in this state under Title 24 RCW. [1972 ex.s. c 106 § 11.]

**19.105.120 Selling membership in camping club for which promotion permit not in force prohibited—Exception.** It shall be unlawful for any person to sell or offer to sell a membership or an option to purchase a membership in a camping club for which a promotion permit is not currently in force unless the membership being sold is held by a member for his own personal use as a bona fide membership in the camping club. [1975 1st ex.s. c 150 § 1; 1972 ex.s. c 106 § 12.]

**19.105.130 Application fee—Additional fees.** Each application for a promotion permit shall be accompanied by an application fee in the amount of three hundred dollars. The director shall impose an additional fee in the amount of one hundred dollars in the event of the issuance of a promotion permit conditioned on an impounding of the proceeds from memberships sales and charges, and an additional fee in the amount of one hundred dollars in the event the promoter is required to establish a reserve fund or reserve funds under this chapter. [1972 ex.s. c 106 § 13.]

**19.105.140 Administrative Procedure Act applicable to chapter—Duties of director.** The provisions of the



Administrative Procedure Act, chapter 34.04 RCW, as now law or hereafter amended, shall apply to any administrative procedures carried out by the director under the provisions of this chapter. The director shall hold a hearing, if one is demanded, on any issue concerning the granting, revocation, or suspension of a permit. The director may adopt rules and regulations to implement the provisions of this chapter. In addition, he may (1) make investigations to determine whether any provisions of this chapter, or rules and regulations adopted hereunder, have been violated; (2) make investigations to determine whether a promotion permit should be granted, denied, revoked, or suspended; and (3) subpoena witnesses in order to compel their attendance or require them to produce any books, papers, correspondence, agreements, or other documents or records which he deems relevant or material to any investigation or hearing conducted by him under the provisions of this chapter. [1972 ex.s. c 106 § 14.]

**19.105.150 Camping clubs not considered subdivisions—Powers of cities and towns not impaired.** A camping club shall not be considered a subdivision under RCW 58.17.020(1). Nothing in this chapter shall prevent counties or cities from enacting ordinances or resolutions setting platting or subdivision requirements solely for camping clubs. [1972 ex.s. c 106 § 15.]

**19.105.160 Chapter not exclusive.** Except as specifically provided herein, the provisions of this chapter shall not exclude the application of any other law to camping clubs, camping club members, or promoters. [1972 ex.s. c 106 § 16.]

**19.105.170 Exceptions.** (1) The director shall if he finds it necessary to the business of a camping club in the process of development as of May 23, 1972 extend the time by which the developer shall be required to obtain a promotion permit and otherwise comply with this chapter.

(2) RCW 19.105.090 shall not apply to or affect the validity of any contract for membership in a camping club entered into prior to May 23, 1972.

(3) RCW 19.105.100 and 19.105.150 shall not apply to any camping club in the process of development as of May 23, 1972.

(4) RCW 19.105.110 shall not apply to any fees or charges imposed upon or collected from a camping club member prior to May 23, 1972.

(5) A promotion permit may not be suspended or revoked under RCW 19.105.070 for conduct engaged in prior to May 23, 1972. [1972 ex.s. c 106 § 17.]

**19.105.180 Effective date of rules and regulations.** Prior to May 23, 1972, the director may adopt rules and regulations to implement this chapter, but any rules and regulations so adopted shall not take effect prior to such effective date. [1972 ex.s. c 106 § 18.]

**19.105.190 Chapter not applicable to certain camping clubs.** The provisions of this chapter shall not apply to any camping club which is registered pursuant to the

securities and exchange act of 1933 and/or the securities act of the state of Washington. [1972 ex.s. c 106 § 19.]

**19.105.200 Violations constitute unfair or deceptive practice.** Any violation of the provisions of this chapter shall be construed, for the purposes of application of the Consumer Protection Act, chapter 19.86 RCW, to constitute an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce. [1973 1st ex.s. c 79 § 1.]

**19.105.210 Making false or misleading statements prohibited.** It is unlawful for any person to make or cause to be made, in any document filed with the director or in any proceeding under this chapter, any statement that is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect. [1975 1st ex.s. c 150 § 2.]

**19.105.220 Violations—Penalty—Time limitation.** Any person who wilfully violates any provisions of this chapter or any rules or order under this chapter commits a gross misdemeanor; but no person may be convicted for the violation of any order if he proves that he had no knowledge of the order. No indictment or information may be returned under this chapter more than five years after the alleged violation. [1975 1st ex.s. c 150 § 3.]

**19.105.230 Violations—Referral to attorney general or prosecuting attorney—Action by director.** The director may refer such evidence as may be available concerning violations of this chapter or of any rule or order hereunder to the attorney general or the proper prosecuting attorney who may in his discretion, with or without such a reference, institute the appropriate civil or criminal proceedings under this chapter. [1975 1st ex.s. c 150 § 4.]

**19.105.240 Punishment under other law not limited.** Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law. [1975 1st ex.s. c 150 § 5.]

**19.105.250 Investigations authorized—Publication of violations.** The director in his discretion (1) may annually, or more frequently, make such public or private investigations within or without this state as he deems necessary to determine whether any registration should be granted, denied or revoked or whether any person has violated or is about to violate any provisions of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder and (2) may publish information concerning any violation of this chapter or any rule or order hereunder. [1975 1st ex.s. c 150 § 6.]

**19.105.260 Investigations—Powers of director and superior courts.** For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take

evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

In case of disobedience on the part of any person to comply with any subpoena lawfully issued by the director, or on the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, the superior court of any county or the judge thereof, on application of the director, and after satisfactory evidence of wilful disobedience, may compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such a court on a refusal to testify therein. [1975 1st ex.s. c 150 § 7.]

**19.105.270 Violations—Cease and desist orders—Procedure—Injunctions.** Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, he may in his discretion:

(1) Issue an order directing the person to cease and desist from continuing the act or practice: *Provided*, That reasonable notice of and opportunity for a hearing shall be given: *Provided, further*, That the director may issue a temporary order pending the hearing which shall be effective upon delivery to the person affected and which shall remain in effect until ten days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within fifteen days after receipt of notice; or

(2) The director may without issuing a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The director may not be required to post a bond. [1975 1st ex.s. c 150 § 8.]

**19.105.900 Severability—1972 ex.s. c 106.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1972 ex.s. c 106 § 20.]



# TITLE 20

## COMMISSION MERCHANTS—AGRICULTURAL PRODUCTS

### Chapters

#### 20.01 Agricultural products—Commission merchants, dealers, brokers, buyers, agents.

*Imported seeds, nursery stock, fruit, vegetables, markings on packaging: RCW 17.24.060.*

*Lien for transportation, storage, advancements, etc: Chapter 60.60 RCW.*

*Sales of personal property: Title 62A RCW.*

*Trust receipts: Title 62A RCW.*

*Washington wholesome eggs and egg products act: Chapter 69.25 RCW.*

### Chapter 20.01

#### AGRICULTURAL PRODUCTS—COMMISSION MERCHANTS, DEALERS, BROKERS, BUYERS, AGENTS

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*Lien of commission merchant for charges: Chapter 60.60 RCW.*

**20.01.010 Definitions.** (1) "Director" means the director of agriculture or his duly authorized representative.

(2) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(3) "Agricultural product" means any horticultural, viticultural, berry, poultry, poultry product, grain including mint or mint oil processed by or for the producer thereof and hay and straw baled or prepared for market in any manner or form by or for the producer thereof, bee, or other agricultural products, and livestock except horses, mules, and asses.

(4) "Producer" means any person engaged in the business of growing or producing any agricultural product.

(5) "Consignor" means any producer, person or his agent who sells, ships or delivers to any commission merchant, dealer, cash buyer, or agent, any agricultural product for processing, handling, sale or resale.

(6) "Commission merchant" means any person who shall receive on consignment for sale or processing and sale from the consignor thereof any agricultural product for sale on commission on behalf of such consignor, or who shall accept any farm product in trust from the consignor thereof for the purpose of resale, or who shall sell or offer for sale on commission any agricultural product, or who shall in any way handle for the account of or as an agent of the consignor thereof, any agricultural product.

(7) "Dealer" means any person other than a commission merchant or cash buyer, as defined in subsection (9) of this section, who solicits, contracts for or obtains from the consignor thereof, for reselling or processing, title, possession or control of any agricultural product, or who buys or agrees to buy any agricultural product from the consignor thereof for sale or processing: *Provided*, That for the purpose of \*this 1971 amendatory act the term dealer includes any person who purchases livestock on behalf of and for the account of another.

(8) "Broker" means any person other than a commission merchant, dealer, or cash buyer who negotiates the purchase or sale of any agricultural product: *Provided*, That no broker may handle the agricultural products involved or proceeds of such sale.

(9) "Cash buyer" means any person other than a commission merchant, dealer, or broker, who obtains from the consignor thereof for the purpose of resale or processing, title, possession or control of any agricultural

product or who contracts for the title, possession or control of any agricultural product, or who buys or agrees to buy any agricultural product by paying to the consignor at the time of obtaining possession or control of any agricultural product the full agreed price of such agricultural product, in coin or currency, lawful money of the United States. However, a cashier's check, certified check or bankdraft may be used for such payment.

(10) "Agent" means any person who, on behalf of any commission merchant, dealer, broker, or cash buyer, receives, contracts for or solicits any agricultural product from the consignor thereof or who negotiates the consignment or purchase of any agricultural product on behalf of any commission merchant, dealer, broker, or cash buyer and who transacts all or a portion of such business at any location other than at the principal place of business of his employer: *Provided*, That, with the exception of an agent for a commission merchant or dealer handling horticultural products, an agent may operate only in the name of one principal and only to the account of said principal.

(11) "Retail merchant" means any person operating from a bona fide or established place of business selling agricultural products twelve months of each year: *Provided*, That any retailer may occasionally wholesale any agricultural product which he has in surplus; however, such wholesaling shall not be in excess of two percent of such retailer's gross business.

(12) "Fixed or established place of business" for the purpose of this chapter shall mean any permanent warehouse, building, or structure, at which necessary and appropriate equipment and fixtures are maintained for properly handling those agricultural products generally dealt in, and at which supplies of the agricultural products being usually transported are stored, offered for sale, sold, delivered and generally dealt in in quantities reasonably adequate for and usually carried for the requirements of such a business and which is recognized as a permanent business at such place, and carried on as such in good faith and for the purpose of not evading this chapter, and where specifically designated personnel are available to handle transactions concerning those agricultural products generally dealt in, said personnel being available during designated and appropriate hours to that business, and shall not mean a residence, barn, garage, tent, temporary stand or other temporary quarters, any railway car, or permanent quarters occupied pursuant to any temporary arrangement.

(13) "Processor" means any person, firm, company or other organization that purchases agricultural crops from a farmer-producer and who cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes such crops in any manner whatsoever for eventual resale.

(14) "Pooling contract" means any written agreement whereby a consignor delivers a horticultural product to a commission merchant under terms whereby the commission merchant may commingle the consignor's horticultural products for sale with others similarly agreeing, which must include all of the following:

(a) A delivery receipt for the consignor which shall indicate the variety of horticultural product delivered, the number of containers, or the weight and tare thereof.

(b) Horticultural products received for handling and sale in the fresh market shall be accounted for to the consignor with individual pack-out records which shall include variety, grade, size and date of delivery. Individual daily packing summaries shall be available within forty-eight hours after packing occurs: *Provided*, That platform inspection shall be acceptable by mutual contract agreement on small deliveries to determine variety, grade, size and date of delivery.

(c) Terms under which the commission merchant may use his judgment in regard to the sale of the pooled horticultural product.

(d) Terms setting forth the charges as filed with the state of Washington.

(e) A provision that the consignor shall be paid for his pool contribution when the pool is in the process of being marketed in direct proportion, up to eighty percent of his interest less expenses directly incurred, prior liens and other advances on the growers crop unless otherwise mutually agreed upon between grower and commission merchant. [1974 ex.s. c 102 § 2; 1971 ex.s. c 182 § 1; 1967 c 240 § 40; 1963 c 232 § 1; 1959 c 139 § 1.]

**\*Reviser's note:** "this 1971 amendatory act" [1971 ex.s. c 182] consists of the 1971 amendments to RCW 20.01.010, 20.01.030, 20.01.040, 20.01.060, 20.01.080, 20.01.125, 20.01.130, 20.01.210, 20.01.212, 20.01.214, 20.01.330, 20.01.410, 20.01.475, and to RCW 20.01.480-20.01.560.

**20.01.020 Rules and regulations—Enforcement of chapter—Interference prohibited.** The director, but not his duly authorized representative, may adopt such rules and regulations as are necessary to carry out the purpose of this chapter. It shall be the duty of the director to enforce and carry out the provisions of this chapter, rules and regulations adopted hereunder. No person shall interfere with the director when he is performing or carrying out duties imposed on him by this chapter, rules and regulations adopted hereunder. [1959 c 139 § 2.]

**20.01.030 Exemptions.** This chapter does not apply to:

(1) Any cooperative marketing associations or federations incorporated under, or whose articles of incorporation and bylaws are equivalent to, the requirements of chapter 23.86 RCW or chapter 24.32 RCW, except as to that portion of the activities of such association or federation as involves the handling or dealing in the agricultural products of nonmembers of such organization: *Provided*, That such associations or federations may purchase up to fifteen percent of their gross from nonmembers for the purpose of filling orders: *Provided further*, That if such cooperative or association acts as a processor as defined in RCW 20.01.500(2) and markets such processed agricultural crops on behalf of the grower or its own behalf, said association or federation shall be subject to the provisions of RCW 20.01.500 through 20.01.560 and the license provision of this chapter excluding bonding provisions: *Provided further*, That none of the foregoing exemptions in this subsection shall apply to any such cooperative or federation dealing

in or handling grain in any manner, and not licensed under the provisions of chapter 22.09 RCW.

(2) Any person who sells exclusively his own agricultural products as the producer thereof.

(3) Any public livestock market operating under a bond required by law or a bond required by the United States to secure the performance of such public livestock market's obligation.

(4) Any retail merchant having bona fide fixed or permanent place of business in this state.

(5) Any person buying farm products for his own use or consumption.

(6) Any warehouseman or grain dealer licensed under the state grain warehouse act.

(7) Any nurseryman who is required to be licensed under the horticultural laws of the state with respect to his operations as such licensee.

(8) Any person licensed under the now existing dairy laws of the state with respect to his operations as such licensee.

(9) Any producer who purchases less than fifteen percent of his volume to fill orders. [1975 1st ex.s. c 7 § 18; 1971 ex.s. c 182 § 2; 1969 ex.s. c 132 § 1; 1967 c 240 § 41; 1959 c 139 § 3.]

**20.01.035 Certain sales of hay, grain, or straw deemed sale at wholesale.** For the purpose of this chapter any sale of hay, grain, or straw by a retail merchant which has not been received and warehoused for sale at retail in the retail merchant's fixed place of business, including but not limited to any such sale of hay, grain, or straw delivered directly from the producer to the user, shall be considered a sale at wholesale. [1965 c 69 § 1.]

**20.01.038 License required of persons dealing in livestock, hay, grain or straw.** Any person who deals in livestock, hay, grain or straw, other than the producer or grower thereof, shall license as a dealer or commission merchant and shall be subject to all the provisions of this chapter regulating such a licensee. [1963 c 232 § 9.]

**20.01.040 Licensing required—Fees.** On or after the effective date of this chapter no person shall act as a commission merchant, dealer, broker, cash buyer or agent without a license. Any person applying for such a license shall file an application with the director on or before January 1st of each year. Such application shall be accompanied by the following license fee:

- (1) Commission merchant, eighty dollars
- (2) Dealer, eighty dollars
- (3) Broker, eighty dollars
- (4) Cash buyer, thirty dollars
- (5) Agent, ten dollars. [1974 ex.s. c 102 § 3; 1971 ex.s. c 182 § 3; 1959 c 139 § 4.]

**20.01.050 License renewals.** If an application for renewal of a commission merchant, dealer, broker or cash buyer license is not filed prior to January 1st in any year, a penalty of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*,

That such penalty shall not apply if the applicant furnishes an affidavit certifying that he has not acted as a commission merchant, dealer, broker or cash buyer subsequent to the expiration of his prior license. [1959 c 139 § 5.]

**20.01.060 Licensee in one class may obtain license in another—Additional fee.** Any person licensed as a commission merchant, dealer, or broker, in the manner herein prescribed, may apply for and secure a license in any or all of the remaining such classifications upon payment of an additional fee of twenty-five dollars. Such applicant shall further comply with those parts of this chapter regulating the licensing of the other particular classifications involved. [1974 ex.s. c 102 § 4; 1971 ex.s. c 182 § 4; 1959 c 139 § 6.]

**20.01.070 Application for license—Contents.** Application for a license shall be on a form prescribed by the director and shall state the full name of the person applying for such license and if the applicant is an individual, receiver, trustee, firm, exchange, partnership, association or corporation, the full name of each member of the firm or partnership, or the names of the officers of the exchange, association or corporation shall be given in the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name or names of the person authorized to receive and accept service of summons and legal notices of all kinds for the applicant and any other necessary information prescribed by the director. [1959 c 139 § 7.]

**20.01.080 Commission merchant's schedule of commissions and charges—Changes, posting.** Any person applying for a commission merchant's license shall include in his application a schedule of commissions, together with an itemized list of all charges for services rendered to a consignor and shall post a copy of such charges on his premises where it is available to consignors. Such commissions and charges shall not be changed or varied for the license period except by written contract between the consignor or his agent and the licensee or thirty days after written notice to the director, and proper posting of such changes, as prescribed by the director, on the licensee's premises. Charges for services rendered and not listed on the schedule of commissions and charges filed with the director shall be rendered only on an actual cost to the licensee basis. [1971 ex.s. c 182 § 5; 1959 c 139 § 8.]

**20.01.086 Waiver of reporting provisions prohibited—Satisfaction of reporting and records requirements.** The reporting provisions of \*section 9 of this 1974 amendatory act and of RCW 20.01.370 and 20.01.380 being matters of public interest may not be waived by contract between the consignor and/or the commission merchant or dealer.

Notwithstanding any other provision of \*sections 1, 2, 3, 4, 5, 6, 8, and 9 of this 1974 amendatory act the reporting and records requirements of RCW 20.01.380 may be satisfied by any dealer handling horticultural

products by his making such records available at his principal place of business for inspection by the consignor. [1974 ex.s. c 102 § 8.]

**\*Reviser's note:** The internal references to various sections of 1974 ex.s. c 102 do not appear to be accurate. For this reason no attempt has been made to translate the references into RCW numbers.

**20.01.090 Agent to disclose principal licensee and his endorsement.** Any person applying for an agent's license shall include the name and address of the principal licensee represented or sought to be represented by such agent and the written endorsement or nomination of such principal licensee. [1959 c 139 § 9.]

**20.01.100 Issuance of license—Expiration date—Fraudulent application grounds for refusal, revocation.** The director, upon his satisfaction that the applicant has met the requirements of this chapter and rules and regulations adopted hereunder, shall issue a license entitling the applicant to carry on the business described on the application. Such license shall expire on December 31st following the issuance of the license, provided that it has not been revoked or suspended prior thereto, by the director, after due notice and hearing. Fraud and misrepresentation in making an application for a license shall be cause for refusal to grant a license or revocation of license granted pursuant to a fraudulent application after due notice and hearing. [1959 c 139 § 10.]

**20.01.110 Publication of list of licensees and rules—Posting license.** The director may publish a list, as often as he deems necessary, of all persons licensed under this chapter together with all the necessary rules and regulations concerning the enforcement of this chapter. Each person licensed under [the] provisions of this chapter shall post his license or a copy thereof in his place or places of business in plain view of the public. [1959 c 139 § 11.]

**20.01.120 Vehicle license plates.** The licensee shall prominently display license plates issued by the director on the front and back of any vehicle used by the licensee to transport upon public highways unprocessed agricultural products which he has not produced as a producer of such agricultural products. If the licensee operates more than one vehicle to transport unprocessed agricultural products on public highways he shall apply to the director for license plates for each such additional vehicle. Such additional license plates shall be issued to the licensee at the actual cost to the department for such license plates and necessary handling charges. Such license plates are not transferable to any other person and may be used only on the licensee's vehicle or vehicles. The display of such license plates on the vehicle or vehicles of a person whose license has been revoked, or the failure to surrender such license plates forthwith to the department after such revocation, shall be deemed a violation of this chapter. [1959 c 139 § 12.]



**20.01.125 Hay or straw, certified vehicle weights for each load.** Every dealer and commission merchant dealing in hay or straw shall obtain a certified vehicle tare weight and a certified vehicle gross weight for each load hauled. [1971 ex.s. c 182 § 6; 1963 c 232 § 8.]

**20.01.130 Disposition of fees.** All fees received by the department under the provisions of this chapter shall be paid to the director and shall be used solely for the purpose of carrying out the provisions of this chapter and rules and regulations adopted hereunder. [1973 c 142 § 1; 1971 ex.s. c 182 § 7; 1959 c 139 § 13.]

**20.01.140 Change in organization of firm to be reported.** Any change in the organization of any firm, association, exchange, corporation, or partnership licensed under the provisions of this chapter shall be reported to the director and the licensee's surety or sureties. [1959 c 139 § 14.]

**20.01.150 Denial, suspension, revocation of licenses, probationary orders—Authority.** The director is authorized to deny, suspend, or revoke a license or issue conditional or probationary orders in the manner prescribed herein, in any case in which he finds that there has been a failure and/or refusal to comply with the requirements of this chapter, rules or regulations adopted hereunder. [1959 c 139 § 15.]

**20.01.160 Denial, suspension, revocation of licenses, probationary orders—Procedure.** In all proceedings for revocation, suspension, or denial of a license, or the issuance of a conditional or probationary order, the licensee or applicant shall be given an opportunity to be heard and may be represented by counsel. The director shall give the licensee or applicant twenty days' notice in writing and such notice shall specify the charges or reasons for the hearing for such revocation, suspension, denial or the issuance of a conditional or probationary order. The notice shall also state the date, time and place where such hearing is to be held. A copy of such notice shall be mailed to the licensee's surety. Such hearings shall be held in the city of Olympia, unless a different place is fixed by the director. [1959 c 139 § 16.]

**20.01.170 Denial, suspension, revocation of licenses, probationary orders—Subpoenas, witnesses, testimony, fees.** The director may issue subpoenas to compel the attendance of witnesses, and/or the production of books or documents, anywhere in the state. The licensee or applicant shall have opportunity to make his defense, and may have such subpoenas issued as he desires. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath which may be administered by the director. Testimony shall be recorded and may be taken by deposition under such rules as the director may prescribe. Witnesses, except complaining witnesses, shall be entitled to fees for attendance and travel, as provided for in chapter 2.40 RCW, as enacted or hereafter amended. [1963 c 232 § 2; 1959 c 139 § 17.]

**20.01.180 Denial, suspension, revocation of licenses, probationary orders—Findings and conclusions—Record.** The director shall hear and determine the charges, make findings and conclusions upon the evidence produced, and file them in his office, together with a record of all of the evidence, and serve upon the accused a copy of such findings and conclusions. [1959 c 139 § 18.]

**20.01.190 Denial, suspension, revocation of licenses, probationary orders—Final action in writing—Appeal to superior court.** The revocation, suspension or denial of a license, or the issuance of conditional or probationary orders, shall be in writing signed by the director, stating the grounds upon which such order is based and the aggrieved person shall have the right to appeal from such order within fifteen days after a copy thereof is served upon him, to the superior court of Thurston county or the county in which the hearing was held. A copy of such findings shall be mailed to the licensee's surety. In such appeal the entire record shall be certified by the director to the court, and the review on appeal shall be confined to the evidence adduced at the hearing before the director. [1959 c 139 § 19.]

**20.01.200 Denial, suspension, revocation of licenses, probationary orders—Appeal to supreme court or court of appeals.** An appeal shall lie to the supreme court or the court of appeals from the judgment of the superior court as provided in other civil cases. [1971 c 81 § 66; 1959 c 139 § 20.]

**20.01.210 Commission merchants, dealers—Bonds.** Before the license is issued to any commission merchant and/or dealer the applicant shall execute and deliver to the director a surety bond executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Such bond shall be in the sum of seven thousand five hundred dollars for a commission merchant or any dealer handling livestock, hay, grain, or straw and a bond in the sum of three thousand dollars for any other dealer: *Provided*, That the bond for a commission merchant, a dealer acting as a processor, or a dealer in livestock, hay, grain, or straw shall be in a minimum amount of seven thousand five hundred dollars or more based upon the annual gross dollar volume of purchases by, or consignments to the licensee. The bond for such commission merchant or dealer shall be determined by taking the annual gross dollar volume of that commission merchant or dealer of net payment to growers and dividing that amount by one hundred thirty and the bond shall be in an amount to the next multiple of two thousand dollars larger than the sum: *Provided*, That the gross dollar volume used in computing the bond requirements of a commission merchant or dealer handling horticultural products shall be based on the net proceeds due to growers: *Provided further*, That bonds above twenty-six thousand dollars shall be not less than the next multiple of five thousand dollars above the amount secured by applying the formula except that when the bond amount reaches fifty thousand dollars any amount of bond required above this

shall be on a basis of ten percent of the amount arrived by applying the formula of annual gross divided by one hundred thirty. Such bond shall be of a standard form and approved by the director as to terms and conditions. Said bond shall be conditioned that the principal will not commit any fraudulent act and will comply with the provisions of this chapter and the rules and regulations adopted hereunder. Said bond shall be to the state for the benefit of every consignor of an agricultural product in this state. The total and aggregate liability of the surety for all claims upon the bond shall be limited to the face of such bond. Every bond filed with and approved by the director shall without the necessity of periodic renewal remain in force and effect until such time as the license of the licensee is revoked for cause or otherwise canceled, or until released by notice from the director when a superseding bond has been issued and is in effect. All such sureties on a bond, as provided herein, shall also be released and discharged from all liability to the state accruing on such bond by giving notice to the principal and the director by certified mail. Upon receipt of such notice the director shall notify the surety and the principal of the effective date of termination which shall be thirty days from the receipt of such notice by the director, but this shall not operate to relieve, release or discharge the surety from any liability already accrued or which shall accrue (due and to become due hereunder) before the expiration period provided for above. Unless the principal shall before the expiration of such period, file a new bond, the director shall forthwith cancel the principal's license. Upon such cancellation the license and vehicle plates issued attendant to the license shall be surrendered to the director forthwith. [1974 ex.s. c 102 § 5; 1971 ex.s. c 182 § 8; 1963 c 232 § 5. Prior: 1959 c 139 § 21.]

*Cash or other security in lieu of surety bond: RCW 20.01.570.*

**20.01.212 Livestock dealers bonded under federal law.** If an applicant for a commission merchant's and/or dealer's license is bonded as a livestock dealer under the provisions of the Packers and Stockyards Act of 1921 (7 U.S.C. 181) as amended on the \*effective date of this act, and acts as a commission merchant and/or a dealer only in livestock as defined in said Packers and Stockyards Act of 1921 (7 U.S.C. 181), the director may accept such bond in lieu of the bond required in RCW 20.01.210 as good and sufficient and issue the applicant a license limited solely to dealing in livestock. A dealer buying and selling livestock who has furnished a bond as required by the packers and stockyards administration to cover acting as order buyer as well as dealer may also act as an order buyer for others under the provisions of \*\*this 1971 amendatory act, and all persons who act as order buyers of livestock shall license under \*\*this 1971 amendatory act as a livestock dealer: *Provided*, That the applicant shall furnish the director with a bond approved by the United States secretary of agriculture naming the director as trustee. Such bond shall be in a sum equal to or greater than the sum of the bond required in RCW 20.01.210. It shall be a violation for the licensee to act as a commission merchant and/or dealer in any other agricultural commodity without first having notified the

director and furnishing him with a bond as required under the provisions of RCW 20.01.210, and failure to furnish the director with such bond shall be cause for the immediate suspension of the licensee's license, and revocation subject to a hearing. [1971 ex.s. c 182 § 9; 1963 c 232 § 6.]

**Reviser's note:** \*(1) The "effective date of this act" (1963 c 232) was June 13, 1963, see preface, 1963 session laws.

\*\*\*(2) "this 1971 amendatory act", see note following RCW 20.01.010.

**20.01.214 Appeal from rejected bond claim.** Upon any bond claim being denied by the director the claimant must appeal such action to the superior court in the county where this claimant resides in this state or Thurston county, within sixty days after receipt of written notice of such rejection or such rejection shall become final and binding upon the claimant. [1971 ex.s. c 182 § 10; 1963 c 232 § 7.]

**20.01.220 Action on bond for fraud.** Any consignor of an agricultural product claiming to be injured by the fraud of any commission merchant and/or dealer may bring action upon said bond against both principal and surety in any court of competent jurisdiction to recover the damages caused by such fraud. [1959 c 139 § 22.]

**20.01.230 Action on bond for failure to comply with chapter.** The director or any consignor of an agricultural product may also bring action upon said bond against both principal and surety in any court of competent jurisdiction to recover the damages caused by any failure to comply with the provisions of this chapter or the rules and regulations adopted hereunder. [1959 c 139 § 23.]

**20.01.240 Commission merchant, dealer—Failure to pay creditors—Director to ascertain names, addresses—Verified statement.** In case of failure of a commission merchant and/or dealer to pay a consignor for an agricultural product received from said consignor, the director shall proceed forthwith to ascertain the names and addresses of all consignor creditors of such commission merchant and/or dealer, together with the amounts due and owing to them by such commission merchant and/or dealer, and shall request all such consignor creditors to file a verified statement of their respective claims with the director. Such request shall be addressed to each known consignor creditor at his last known address. [1959 c 139 § 24.]

**20.01.250 Failure of consignor to file claim, time limitation.** If a consignor creditor so addressed fails, refuses or neglects to file in the office of the director his verified claim as requested by the director within sixty days from the date of such request, the director shall thereupon be relieved of further duty or action hereunder on behalf of said consignor creditor. [1959 c 139 § 25.]

**20.01.260 Director not liable if circumstances prevent ascertainment of creditors—Demand on bond.** Where by reason of the absence of records, or other circumstances making it impossible or unreasonable for the

director to ascertain the names and addresses of all said consignor creditors, the director after exerting due diligence and making reasonable inquiry to secure said information from all reasonable and available sources, may make demand on said bond on the basis of information then in his possession, and thereafter shall not be liable or responsible for claims or the handling of claims which may subsequently appear or be discovered. [1959 c 139 § 26.]

**20.01.270 Demand on bond after claims ascertained—Power of director to settle, compromise.** Upon ascertaining all claims and statements in the manner herein set forth, the director may then make demand upon the bond on behalf of those claimants whose statements have been filed, and shall have the power to settle or compromise said claims with the surety company on the bond, and is empowered in such cases to execute and deliver a release and discharge of the bond involved. [1959 c 139 § 27.]

**20.01.280 Action on bond after refusal to pay—New bond, failure to file.** Upon the refusal of the surety company to pay the demand the director may thereupon bring an action on the bond in behalf of said consignor creditors. Upon any action being commenced on said bond the director may require the filing of a new bond and immediately upon the recovery in any action on such bond such commission merchant and/or dealer shall file a new bond and upon failure to file the same within ten days in either case such failure shall constitute grounds for the suspension or revocation of his license. [1959 c 139 § 28.]

**20.01.290 Settlement when two or more creditors—Pro rata shares.** In any settlement or compromise by the director with a surety company as provided in RCW 20.01.270, where there are two or more consignor creditors that have filed claims, either fixed or contingent, against a licensee's bond, such creditors shall share pro rata in the proceeds of the bond to the extent of their actual damage. [1959 c 139 § 29.]

**20.01.300 Verified complaints of consignor—Investigations.** For the purpose of enforcing the provisions of this chapter the director is authorized to receive verified complaints from any consignor against any commission merchant, dealer, broker, cash buyer, or agent or any person, assuming or attempting to act as such, and upon receipt of such verified complaint shall have full authority to make any and all necessary investigations relative to the said complaint. [1959 c 139 § 30.]

**20.01.310 Oaths, testimony, witnesses, subpoenas—Contempt proceedings—Records as evidence.** The director or his authorized agents are empowered to administer oaths of verification on said complaints. He shall have full authority to administer oaths and take testimony thereunder, to issue subpoenas in the manner prescribed in RCW 20.01.170 requiring attendance of

witnesses before him, together with all books, memoranda, papers, and other documents, articles or instruments; to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation, and all parties disobeying the orders or subpoenas of said director shall be guilty of contempt and shall be certified to the superior court of the state for punishment for such contempt. Copies of records, audits and reports of audits, inspection certificates, certified reports, findings and all papers on file in the office of the director shall be prima facie evidence of the matters therein contained, and may be admitted into evidence in any hearing provided in this chapter. [1959 c 139 § 31.]

**20.01.320 Investigations, examinations, inspections.** The director on his own motion or upon the verified complaint of any interested party may investigate, examine or inspect (1) any transaction involving solicitation, receipt, sale or attempted sale of agricultural products by any person or persons acting or assuming to act as a commission merchant, dealer, broker, cash buyer, or agent; (2) failure to make proper and true account of sales and settlement thereof as required under this chapter and/or rules and regulations adopted hereunder; (3) the intentional making of false statements as to conditions and quantity of any agricultural products received or in storage; (4) the intentional making of false statements as to market conditions; (5) the failure to make payment for products within the time required by this chapter; (6) any and all other injurious transactions. In furtherance of any such investigation, examination, or inspection, the director or his authorized representative, may examine that portion of the ledgers, books, accounts, memoranda and other documents, agricultural products, scales, measures and other articles and things used in connection with the business of such person relating to the transactions involved. For the purpose of such investigation the director shall at all times have free and unimpeded access to all buildings, yards, warehouses, storage, and transportation facilities or any other place where agricultural products are kept, stored, handled or transported. The director may also, for the purpose of such investigation, issue subpoenas to compel the attendance of witnesses, as provided in RCW 20.01.170, and/or the production of books or documents, anywhere in the state. [1959 c 139 § 32.]

**20.01.330 Denial, revocation, suspension of licenses, probationary orders—Grounds.** The director may refuse to grant a license or renew a license and may revoke or suspend a license or issue a conditional or probationary order if he is satisfied after a hearing, as herein provided, of the existence of any of the following facts, which are hereby declared to be a violation of this chapter:

(1) That fraudulent charges or returns have been made by the applicant, or licensee, for the handling, sale or storage of, or for rendering of any service in connection with the handling, sale or storage of any agricultural product.

(2) That the applicant, or licensee, has failed or refused to render a true account of sales, or to make a

settlement thereon, or to pay for agricultural products received, within the time and in the manner required by this chapter.

(3) That the applicant, or licensee, has made any false statement as to the condition, quality or quantity of agricultural products received, handled, sold or stored by him.

(4) That the applicant, or licensee, directly or indirectly has purchased for his own account agricultural products received by him upon consignment without prior authority from the consignor together with the price fixed by consignor or without promptly notifying the consignor of such purchase. This shall not prevent any commission merchant from taking to account of sales, in order to close the day's business, miscellaneous lots or parcels of agricultural products remaining unsold, if such commission merchant shall forthwith enter such transaction on his account of sales.

(5) That the applicant, or licensee, has intentionally made any false or misleading statement as to the conditions of the market for any agricultural products.

(6) That the applicant, or licensee, has made fictitious sales or has been guilty of collusion to defraud the consignor.

(7) That a commission merchant to whom any consignment is made has reconsigned such consignment to another commission merchant and has received, collected, or charged by such means more than one commission for making the sale thereof, for the consignor, unless by written consent of such consignor.

(8) That the licensee was intentionally guilty of fraud or deception in the procurement of such license.

(9) That the licensee or applicant has failed or refused to file with the director a schedule of his charges for services in connection with agricultural products handled on account of or as an agent of another, or that the applicant, or licensee, has indulged in any unfair practice.

(10) That the licensee has rejected, without reasonable cause, or has failed or refused to accept, without reasonable cause, any agricultural product bought or contracted to be bought from a consignor by such licensee; or failed or refused, without reasonable cause, to furnish or provide boxes or other containers, or hauling, harvesting, or any other service contracted to be done by licensee in connection with the acceptance, harvesting, or other handling of said agricultural products bought or handled or contracted to be bought or handled; or has used any other device to avoid acceptance or unreasonably to defer acceptance of agricultural products bought or handled or contracted to be bought or handled.

(11) That the licensee has otherwise violated any provision of this chapter and/or rules and regulations adopted hereunder.

(12) That the licensee has knowingly employed an agent, as defined in this chapter, without causing said agent to comply with the licensing requirements of this chapter applicable to agents.

(13) That the applicant or licensee has, in the handling of any agricultural products, been guilty of fraud, deceit, or wilful negligence.

(14) That the licensee has failed or refused, upon demand, to permit the director or his agents to make the investigations, examination or audits, as provided in this chapter, or that the licensee has removed or sequestered any books, records, or papers necessary to any such investigations, examination, or audits, or has otherwise obstructed the same.

(15) That the licensee, without reasonable cause, has failed or refused to execute or carry out a lawful contract with a consignor.

(16) That the licensee has failed or refused to keep and maintain the records as required by this chapter and/or rules and regulations adopted hereunder.

(17) That the licensee has attempted payment by check with insufficient funds to cover such check.

(18) That the licensee has been guilty of fraud or deception in his dealings with purchasers including misrepresentation of goods as to grade, quality, weights, quantity, or any other essential fact in connection therewith.

(19) That the licensee has permitted an agent to in fact operate his own separate business under cover of the licensee's license and bond.

(20) That a commission merchant or dealer in livestock, hay, grain, or straw has failed to furnish additional bond coverage within fifteen days of when it was requested in writing by the director. [1971 ex.s. c 182 § 11; 1959 c 139 § 33.]

**20.01.340 Denial, revocation, suspension of licenses, probationary orders—Previous violations as grounds.** Previous violation by the applicant or licensee, or by any person connected with him, of any of the provisions of this chapter and/or rules and regulations adopted hereunder, shall be good and sufficient ground for denial, suspension or revocation of a license, or the issuance of a conditional or probationary order. [1959 c 139 § 34.]

**20.01.350 Denial, revocation, suspension of licenses, probationary orders—Hearing, investigation—Findings required—Notices.** The director, after hearing or investigation, may refuse to grant a license or renewal thereof and may revoke or suspend any license or issue a conditional or probationary order, as the case may require, when he is satisfied that the licensee has executory or executed contracts for the purchase of agricultural products, or for the handling of agricultural products on consignment.

In such cases, if the director is satisfied that to permit the dealer or commission merchant to continue to purchase or to receive further shipments or deliveries of agricultural products would be likely to cause serious and irreparable loss to said consignor—creditors, or to consignors with whom the said dealer or commission merchant has said contracts, then the director within his discretion may thereupon and forthwith shorten the time herein provided for hearing upon an order to show cause why the license of said dealer or commission merchant should not be forthwith suspended, or revoked: *Provided*, That the time of notice of said hearing, shall in no event be less than twenty-four hours, and the director shall, within that period, call a hearing at which the dealer or

commission merchant proceeded against shall be ordered to show cause why the license should not be suspended, or revoked, or continued under such conditions and provisions, if any, as the director may consider just and proper and for the protection of the best interests of the producer-creditors involved. Said hearing, in the case of such emergency, may be called upon written notice, said notice to be served personally or by mail on the dealer or commission merchant involved, and may be held at the nearest office of the director or at such place as may be most convenient at the discretion of the director, for the attendance of all parties involved. [1959 c 139 § 35.]

**20.01.360 Order of revocation, suspension.** Any order revoking or suspending a license may, within the discretion of the director, be made conditional upon the settlement, adjustment or satisfaction of the consequence of the violation or violations as specified, and the operation of such an order may be deferred for such purpose. Any such order may contain provisions for modification or dismissal thereof upon presentation to the director of evidence that the matter of complaint has been settled, adjusted or withdrawn at any time before such order becomes final. [1959 c 139 § 36.]

**20.01.370 Commission merchants records—Contents—Inspection—Pooling.** Every commission merchant, before taking control of any agricultural products for sale as such commission merchant, shall utilize the standard contract format provided for in \*section 8 of this 1974 amendatory act and shall promptly make and keep for a period of one year a correct record showing in detail the following with reference to the handling, sale, or storage of such agricultural products:

- (1) The name and address of the consignor.
- (2) The date received.
- (3) The quality and quantity delivered by the consignor, and where applicable the dockage, tare, grade, size, net weight, or quantity.
- (4) Date of such sale for account of consignor.
- (5) The terms of the sale.
- (6) The terms of payment to the producer.
- (7) An itemized statement of the charges to be paid by consignor in connection with the sale.
- (8) The names and addresses of all purchasers if said commission merchant has any financial interest in the business of said purchasers, or if said purchasers have any financial interest in the business of said commission merchant, directly or indirectly, as holder of the other's corporate stock, as copartner, as lender or borrower of money to or from the other, or otherwise. Such interest shall be noted in said records following the name of any such purchaser.
- (9) A lot number or other identifying mark for each consignment, which number or mark shall appear on all sales tags and other essential records needed to show what the agricultural products actually sold for.
- (10) Any claim or claims which have been or may be filed by the commission merchant against any person for overcharges or for damages resulting from the injury or deterioration of such agricultural products by the act, neglect or failure of such person and such records shall

be open to the inspection of the director and the consignor of agricultural products for whom such claim or claims are made.

(11) Where a pooling arrangement is agreed to in writing between the consignor and commission merchant, the reporting requirements of subsections (4), (5), (6), (7), and (9) of this section shall apply to the pool rather than to the individual consignor or consignment and the records of the pool shall be available for inspection by any consignor to that pool. [1974 ex.s. c 102 § 6; 1963 c 232 § 3; 1959 c 139 § 37.]

**\*Reviser's note:** The reference to "section 8 of this 1974 amendatory act" appears to be erroneous. Section 10, codified as RCW 20.01.445, was apparently intended as that section provides for the standard contract format.

**20.01.380 Dealer's records—Copy to consignor.** Every dealer or cash buyer purchasing any agricultural products from the consignor thereof shall promptly make and keep for one year a correct record showing in detail the following:

- (1) The name and address of the consignor.
- (2) The date received.
- (3) The terms of the sale.
- (4) The quality and quantity delivered by the consignor, and where applicable the dockage, tare, grade, size, net weight, or quantity.
- (5) An itemized statement of any charges paid by the dealer or cash buyer for the account of the consignor.

A copy of such record containing the above matters shall be forwarded to the consignor forthwith. [1963 c 232 § 4; 1959 c 139 § 38.]

**20.01.385 Failure to comply—Construction of transaction.** Whenever a commission merchant or dealer handling any agricultural products fails to carry out the provisions of \*section 5 of this 1974 amendatory act or RCW 20.01.380, whichever is applicable, it shall be prima facie evidence that the transaction involving the handling of any agricultural products between the consignor and the commission merchant or dealer was either a commission type transaction, or dealer transaction constituting an outright sale by the consignor, whichever is most favorable to the consignor. Such determination in favor of the consignor shall be based on the market price of the agricultural product in question at the time the complaint is filed against said commission merchant or dealer by the consignor: *Provided*, That if the return to the consignor is determined most favorably on a commission basis, the total commission shall not exceed ten percent, and all other charges for handling the agricultural product in question shall be figured on the basis of the actual cost of said handling. [1974 ex.s. c 102 § 7; 1967 c 240 § 42.]

**\*Reviser's note:** During the course of passage of the 1974 act which amended this section [1974 ex.s. c 102], a new section 1 was added to the original bill [Senate Bill No. 3078] and the section numbering was changed accordingly. However, the internal references were not changed with the result that a literal translation of "section 5 of this 1974 amendatory act" would be RCW 20.01.210, while a literal translation of section 5 of the original bill would be RCW 20.01.370. The later translation was apparently intended.

**20.01.390 When dealer must pay for products delivered to him.** Every dealer must pay for agricultural products delivered to him at the time and in the manner specified in the contract with the producer, but if no time is set by such contract, or at the time of said delivery, then within thirty days from the delivery or taking possession of such agricultural products. [1959 c 139 § 39.]

**20.01.400 Broker's memorandum of sale.** Every broker, upon negotiating the sale of agricultural products, shall issue to both buyer and seller a written memorandum of sale, showing price, date of delivery, quality, and other details concerned in the transaction. A copy of this memorandum shall be retained by the broker for a period of one year. [1959 c 139 § 40.]

**20.01.410 Manifest of cargo.** A copy of a manifest of cargo, on a form prescribed by the director, shall be carried on any vehicle transporting agricultural products purchased by a dealer or cash buyer, or consigned to a commission merchant from the consignor thereof when prescribed by the director. The commission merchant, dealer or cash buyer shall issue a copy of such manifest to the consignor of such agricultural products and the original shall be retained by the licensee for a period of one year during which time it shall be surrendered upon request to the director. Such manifest of cargo shall be valid only when signed by the licensee or his agent and the consignor of such agricultural products. [1971 ex.s. c 182 § 12; 1959 c 139 § 41.]

**20.01.420 Commission merchant's report of sale to consignor.** When requested by his consignor, a commission merchant shall, before the close of the next business day following the sale of any agricultural products consigned to him, transmit or deliver to the owner or consignor of the agricultural products a true written report of such sale, showing the amount sold, and the selling price. [1959 c 139 § 42.]

**20.01.430 Commission merchant's remittance to consignor.** Every commission merchant shall remit to the consignor of any agricultural product the full price for which such agricultural product was sold within thirty days of said sale, unless otherwise mutually agreed between grower and commission merchant. Such remittance shall include all collections, overcharges and damages, less the agreed commission and other charges and a complete account of the sale. [1974 ex.s. c 102 § 9; 1959 c 139 § 43.]

**20.01.440 Commission merchant's copy of records to be retained—Inspection—Department's certificate of condition, quality, etc.** Every commission merchant shall retain a copy of all records covering each transaction for a period of one year from the date thereof, which copy shall at all times be available for, and open to, the confidential inspection of the director and the consignor, or authorized representative of either. In the event of any dispute or disagreement between a consignor and a commission merchant arising at the time of

delivery as to condition, quality, grade, pack, quantity, or weight of any lot, shipment or consignment of agricultural products, the department shall furnish, upon the payment of a reasonable fee therefor by the requesting party, a certificate establishing the condition, quality, grade, pack, quantity, or weight of such lot, shipment or consignment. Such certificate shall be prima facie evidence in all courts of this state as to the recitals thereof. The burden of proof shall be upon the commission merchant to prove the correctness of his accounting as to any transaction which may be questioned. [1959 c 139 § 44.]

**20.01.445 Standard contract format.** The director, in accordance with the provisions of chapter 34.04 RCW and in conjunction with representatives of producers and commission merchants, shall develop a standard contract format for use in the sale or consignment of agricultural products by persons licensed as commission merchants pursuant to this chapter.

On and after the effective date of the rules and regulations establishing the standard contract format, the director or the supervisor of the appropriate division of the department of agriculture shall approve contracts for the sale or consignment of agricultural products by persons licensed as commission merchants pursuant to this chapter to insure that such contracts are in the form and style required by the department's rules and regulations. [1974 ex.s. c 102 § 10.]

**20.01.450 Claims against seller by dealer, cash buyer—Credit to dealer, cash buyer against consignor—Certificate of proof.** No claim may be made as against the seller of agricultural products by a dealer or cash buyer under this chapter, and no credit may be allowed to such dealer or cash buyer as against a consignor of agricultural products by reason of damage to, or loss, dumping, or disposal of agricultural products sold to said dealer or cash buyer, in any payment, accounting or settlement made by said dealer or cash buyer to said consignor, unless said dealer or cash buyer has secured and is in possession of a certificate, issued by an agricultural inspector, county health officer, director, a duly authorized officer of the state department of health, or by some other official now or hereafter authorized by law, to the effect that the agricultural products involved have been damaged, dumped, destroyed or otherwise disposed of as unfit for the purpose intended. Such certificate will not be valid as proof of proper claim, credit or offset unless issued within twenty-four hours, or a reasonable time as prescribed by the director, of the receipt by the dealer or cash buyer of the agricultural products involved. [1959 c 139 § 45.]

**20.01.460 Prohibited acts—Penalty.** Any person is guilty of a gross misdemeanor who assumes or attempts to act or acts as a commission merchant, dealer, broker, cash buyer, or agent without a license, or any licensee who:

(1) Imposes false charges for handling or services in connection with agricultural products.



(2) Intentionally makes false or misleading statement or statements as to market conditions.

(3) Makes fictitious sales or is guilty of collusion to defraud the consignor.

(4) Directly or indirectly purchases, for his own account, goods received by him upon consignment without prior authority from the consignor, or fails promptly to notify the consignor of such purchases, if any; on his own account. This clause does not prevent any commission merchant from taking to account of sales, in order to close the day's business, miscellaneous lots or parcels of farm products remaining unsold, if such commission merchant forthwith enters such transaction on his account of sales.

(5) Intentionally makes false statement or statements as to the grade, conditions, markings, quality, or quantity of goods shipped or packed in any manner.

(6) Fails to comply in every respect with the provisions of this chapter and/or rules and regulations adopted hereunder. [1959 c 139 § 46.]

**20.01.470 Action to enjoin violation of chapter.** The director may bring an action to enjoin the violation or the threatened violation of any provision of this chapter or of any order made pursuant to this chapter in the superior court in the county in which such violation occurs or is about to occur. [1959 c 139 § 47.]

**20.01.475 Licensee under chapter—Prima facie evidence acting as licensee handling agricultural products.** It shall be prima facie evidence that a licensee licensed under the provisions of \*this 1971 amendatory act is acting as such in the handling of any agricultural product. [1971 ex.s. c 182 § 13; 1967 c 240 § 43.]

\*Reviser's note: "this 1971 amendatory act", see note following RCW 20.01.010.

**20.01.480 Violations resulting in improper or non-payment—Charges.** When a violation has occurred which results in improper payment or nonpayment and a claim is made to the department and the payment is secured through the actions of the department the following charges will be made to the consignor for the action of the department in the matter:

(1) When reported within thirty days from time of default, no charge.

(2) When reported thirty days to one hundred eighty days from time of default, five percent.

(3) When reported after one hundred eighty days from time of default, ten percent. [1971 ex.s. c 182 § 14.]

**20.01.500 "Grower", "processor" defined—Application of exemption contained in RCW 20.01.030(1).** Notwithstanding any other provision of law, for the purposes of RCW 20.01.510 through 20.01.550 the term "grower" and the term "producer" shall have the meanings ascribed thereto by this section:

(1) "Grower" means any person, firm, company, or other organization that is engaged in the production of agricultural crops (other than sugar beets or alfalfa),

which must be planted, cultivated, and harvested within a twelve month period.

(2) (a) "Processor" means any person, firm, company, or other organization that purchases agricultural crops from a grower and who cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes such crops in any manner whatsoever for eventual resale.

(b) The exemption provided for in RCW 20.01.030(1) shall not apply to a cooperative or association as defined therein, which acts as a processor defined herein, and markets such agricultural crops on behalf of the grower or on its own behalf. [1971 ex.s. c 182 § 15.]

**20.01.510 Processor's form showing maximum processing capacity.** In order to carry out the purposes of \*this 1971 amendatory act, the director may require a processor to annually complete a form prescribed by the director, which, when completed, will show the maximum processing capacity of each plant operated by the processor in the state of Washington. Such completed form shall be returned to the director by a date prescribed by him. [1971 ex.s. c 182 § 16.]

\*Reviser's note: "this 1971 amendatory act", see note following RCW 20.01.010.

**20.01.520 Processor to have grower contracts and commitments on file.** By a date or dates prescribed prior to planting time by the director, the director, in order to carry out the purposes of \*this 1971 amendatory act, may require a processor to have filed with him:

(1) A copy of each contract he has entered into with a grower for the purchase of acres of crops and/or quantity of crops to be harvested during the present or next growing season; and

(2) A notice of each oral commitment he has given to growers for the purchase of acres of crops and/or quantity of crops to be harvested during the present or next growing season, and such notice shall disclose the amount of acres and/or quantity to which the processor has committed himself. [1971 ex.s. c 182 § 17.]

\*Reviser's note: "this 1971 amendatory act", see note following RCW 20.01.010.

**20.01.530 Grower may file form showing crops processor is committed to purchase.** Any grower may file with the director on a form prescribed by him the acres of crops and/or quantity of crops to be harvested during the present or next growing season, which he understands a processor has orally committed himself to purchase. [1971 ex.s. c 182 § 18.]

**20.01.540 Committing to purchase more crops than plants can process—Violation.** Any processor who, from the information filed with the director, appears to or has committed himself either orally or in writing to purchase more crops than his plants are capable of processing shall be in violation of this chapter and his dealer's license subject to denial, suspension, or revocation as provided for in RCW 20.01.330. [1971 ex.s. c 182 § 19.]



**20.01.550 Discrimination by processor.** Any processor who wilfully discriminates between growers with whom he contracts as to price, conditions for production, harvesting, and delivery of crops which is not supportable by economic cost factors shall be in violation of this chapter and the director may subsequent to a hearing deny, suspend, or revoke such processor's license to act as a dealer. [1971 ex.s. c 182 § 20.]

**20.01.560 Effective date of RCW 20.01.500 through 20.01.550.** RCW 20.01.500 through 20.01.550 shall take effect beginning on September 1, 1972. [1971 ex.s. c 182 § 21.]

**20.01.570 Cash or other security in lieu of surety bond.** In lieu of the surety bond required under the provisions of this chapter, an applicant or licensee may file with the director a deposit consisting of cash or other security acceptable to the director. The director may adopt rules and regulations necessary for the administration of such security. [1973 c 142 § 2.]

**20.01.900 Chapter cumulative and nonexclusive.** The provisions of this chapter shall be cumulative and non-exclusive and shall not affect any other remedy. [1959 c 139 § 48.]

**20.01.910 Severability—1959 c 139.** If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision or part thereof, not adjudged invalid or unconstitutional. [1959 c 139 § 49.]

**20.01.911 Severability—1963 c 232.** See RCW 15.61.900.

**20.01.912 Severability—1967 c 240.** See note following RCW 43.23.010.

**20.01.920 Effective date—1959 c 139.** The effective date of this chapter shall be January 1, 1960. [1959 c 139 § 50.]

**20.01.930 Repealer.** Chapter 14, Laws of 1955 as amended by section 4, chapter 262, Laws of 1955, section 3, chapter 262, Laws of 1955, sections 1 and 2, chapter 262, Laws of 1955 and RCW 20.04.010 through 20.04.120, 20.08.010 through 20.08.110, 20.12.020 through 20.12.040, 20.16.010 through 20.16.040, 20.20.010 through 20.20.060, 20.24.010 through 20.24.070 and 20.98.010 through 20.98.060 are hereby repealed. [1959 c 139 § 51.]

# TITLE 21

## SECURITIES AND INVESTMENTS

### Chapters

**21.17 Uniform act for simplification of fiduciary security transfers.**

**21.20 Securities act of Washington.**

**21.24 Uniform gifts to minors act.**

**21.25 Gifts of realty to minors act.**

**Reviser's note:** Reference is made in Title 21 RCW to the "director of licenses" and the "department of licenses". The powers, duties and functions of the director and department of licenses were transferred to the director and department of motor vehicles by chapter 156, Laws of 1965 (Chapter 46.01 RCW). Section 41, chapter 170, Laws of 1965 ex.s. (RCW 43.24.022) vested the powers, duties and functions of the director of licenses pursuant to Title 21 RCW in the director of motor vehicles and section 42 of that act (RCW 43.24.024) provided for the delegation of such powers, duties and functions to the division of professional licensing of the department of motor vehicles.

These powers, duties and functions devolved to the business and professional administration of the department of motor vehicles by 1969 ex.s. c 281 § 34 (RCW 46.01.050).

*The Washington Principal and Income Act: Chapter 11.104 RCW.*

### Chapter 21.17

#### UNIFORM ACT FOR SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS

##### Sections

- 21.17.010 Definitions.
- 21.17.020 Registration in the name of a fiduciary.
- 21.17.030 Assignment by a fiduciary.
- 21.17.040 Evidence of appointment or incumbency.
- 21.17.050 Adverse claims.
- 21.17.060 Nonliability of corporation and transfer agent.
- 21.17.070 Nonliability of third persons.
- 21.17.080 Territorial application.
- 21.17.090 Tax obligations.
- 21.17.900 Uniformity of interpretation.
- 21.17.910 Short title.

*This act controls over Article 8 RCW, Uniform Commercial Code: RCW 62A.10-104(2).*

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

(1) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust or other instrument of transfer.

(2) "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties.

(3) "Corporation" means a private or public corporation, association or trust issuing a security.

(4) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian or nominee.

(5) "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(6) "Security" includes any share of stock, bond, debenture, note or other security issued by a corporation which is registered as to ownership on the books of the corporation.

(7) "Transfer" means a change on the books of a corporation in the registered ownership of a security.

(8) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation. [1961 c 150 § 1.]

**21.17.020 Registration in the name of a fiduciary.** A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security. [1961 c 150 § 2.]

**21.17.030 Assignment by a fiduciary.** Except as otherwise provided in this chapter, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary

(1) may assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(2) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(3) is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession. [1961 c 150 § 3.]

**21.17.040 Evidence of appointment or incumbency.** A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

(1) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the transfer; or

(2) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection (2) provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection (2) except to the extent that the contents relate directly to the appointment or incumbency. [1961 c 150 § 4.]

**21.17.050 Adverse claims.** (1) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this chapter relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection (2).

(2) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for thirty days after the mailing and shall then make the transfer unless restrained by a court order. [1961 c 150 § 5.]

**21.17.060 Nonliability of corporation and transfer agent.** A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this chapter. [1961 c 150 § 6.]

**21.17.070 Nonliability of third persons.** (1) No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary including a person who guarantees the signature of the fiduciary is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the

transaction involves such a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(2) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this chapter incurs no liability.

(3) This section does not impose any liability upon the corporation or its transfer agent. [1961 c 150 § 7.]

**21.17.080 Territorial application.** (1) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized, or in the case of a security issued by a corporation organized under the laws of the United States of America, by the law of the state in which such corporation has its principal place of business.

(2) This chapter applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment or transfer of a security by or to a fiduciary and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction. [1967 c 208 § 1; 1961 c 150 § 8.]

**21.17.090 Tax obligations.** This chapter does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession or other taxes imposed by the laws of this state. [1961 c 150 § 9.]

**21.17.900 Uniformity of interpretation.** This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1961 c 150 § 10.]

**21.17.910 Short title.** This chapter may be cited as the uniform act for simplification of fiduciary security transfers. [1961 c 150 § 11.]

## Chapter 21.20 SECURITIES ACT OF WASHINGTON

### Sections

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- 21.20.940 Short title.

*"Bucket shop": RCW 9.47.080, 9.47.090.*

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*Securities of public utilities: Chapter 80.08 RCW.*

*Trust receipts: Title 62A RCW.*

*Uniform Commercial Code—Investment securities: Article 62A.8 RCW.*

*Written statement of purchase or sale to be furnished market trader: RCW 9.47.100.*

#### DEFINITIONS

**21.20.005 Definitions.** When used in this chapter, unless the context otherwise requires:

(1) "Director" means the \*director of licenses of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but "salesman" does not include an individual who represents an issuer in (a) effecting a transaction in a security exempted by RCW 21.20.310(1), (2), (3), (4), (9), or (10), (b) effecting transactions exempted by RCW 21.20.320, or (c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include (a) a salesman, issuer, bank, savings institution, or trust company, (b) a person who

has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (c) a person who has no place of business in this state if during any period of twelve consecutive months he does not direct more than fifteen offers to sell or to buy into this state in any manner to persons other than those specified in subsection (b) above.

(4) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(5) "Full business day" means all calendar days, excluding therefrom Saturdays, Sundays, and all legal holidays, as defined by statute.

(6) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include (a) a bank, savings institution, or trust company, (b) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession, (c) a broker-dealer, (d) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation, (e) a person whose advice, analyses, or reports relate only to securities exempted by RCW 21.20.310(1), (f) a person who has no place of business in this state if (i) his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trust, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during any period of twelve consecutive months he does not direct business communications into this state in any manner to more than five clients other than those specified in clause (i) above, or (g) such other persons not within the intent of this paragraph as the director may by rule or order designate.

(7) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type; the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(8) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(9) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interest of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(10) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(11) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" means the federal statutes of those names as amended before or after the \*\*effective date of this chapter.

(12) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing; or any sale of or indenture, bond or contract for the conveyance of land or any interest therein where such land is situated outside of the state of Washington and such sale or its offering is not conducted by a real estate broker licensed by the state of Washington. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

(13) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(14) "Investment adviser salesman" means a person retained or employed by an investment adviser to solicit clients or offer the services of the investment adviser or manage the accounts of said clients. [1975 1st ex.s. c 84 § 1; 1967 c 199 § 1; 1961 c 37 § 1; 1959 c 282 § 60.]

**Reviser's note:** \*(1) The powers, duties and functions of the director and department of licenses were transferred to the director and department of motor vehicles by chapter 156, Laws of 1965 (chapter 46.01 RCW). Section 42 of chapter 170, Laws of 1965 ex.s. (RCW

43.24.024) provided for the delegation of powers, duties and functions pertaining to administration of securities to the division of professional licensing of the department of motor vehicles.

These powers, duties and functions devolved to the business and professional licensing administration of the department of motor vehicles by 1969 ex.s. c 281 § 34 (RCW 46.01.050).

\*\* (2) The "effective date of this chapter" (1959 c 282) was midnight, June 10, 1959, see preface 1959 session laws.

## FRAUDULENT AND OTHER PROHIBITED PRACTICES

**21.20.010 Unlawful offers, sales, purchases.** It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly:

(1) To employ any device, scheme, or artifice to defraud;

(2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. [1959 c 282 § 1.]

**21.20.020 Unlawful acts of person advising another.** It is unlawful for any person who receives any consideration from another party primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

(1) To employ any device, scheme, or artifice to defraud the other person; or

(2) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person. [1959 c 282 § 2.]

**21.20.030 Unlawful acts of investment adviser.** It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

(1) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(2) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(3) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

Subsection (1) above does not prohibit an investment advisory contract which provides for compensation based upon the total of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment", as used in subsection (2) above, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from

the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business. [1959 c 282 § 3.]

**REGISTRATION OF BROKER-DEALERS,  
SALESMEN, AND INVESTMENT ADVISERS,  
SALESMEN**

**21.20.040 Registration required—Exemptions.** It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under RCW 21.20.320, unless he is registered under this chapter: *Provided*, That an exemption from registration as a broker-dealer or salesman to sell or resell condominium units sold in conjunction with an investment contract, may be provided by rule or regulation of the director as to persons who are licensed pursuant to the provisions of chapter 18.85 RCW. It is unlawful for any broker-dealer or issuer to employ a salesman unless the salesman is registered or exempted from registration. It is unlawful for any person to transact business in this state as an investment adviser unless (1) he is so registered under this chapter, or (2) he is registered as a broker-dealer under this chapter, or (3) his only clients in this state are investment companies as defined in the Investment Company Act of 1940, or insurance companies. It is unlawful for any person to transact business in this state as an investment adviser salesman or for any investment adviser to employ an investment adviser salesman unless such person is registered. [1975 1st ex.s. c 84 § 2; 1974 ex.s. c 77 § 1; 1959 c 282 § 4.]

**Effective date—1974 ex.s. c 77:** "This 1974 amendatory act shall take effect on July 1, 1974." [1974 ex.s. c 77 § 14.] This applies to RCW 21.20.040, 21.20.070, 21.20.135, 21.20.230, 21.20.260, 21.20.275, 21.20.320, 21.20.325, 21.20.340, 21.20.380, 21.20.390, 21.20.430, and 21.20.435.

**Insurance, solicitation permits for sale of securities:** RCW 48.06.090.

**21.20.050 Application for registration—Consent to service of process.** A broker-dealer, salesman, investment adviser, or investment adviser salesman may apply for registration by filing with the director an application together with a consent to service of process in such form as the director shall prescribe and payment of the fee prescribed in RCW 21.20.340. [1975 1st ex.s. c 84 § 3; 1961 c 37 § 2; 1959 c 282 § 5.]

**21.20.060 Contents of application for registration—Capital requirements.** The application shall contain whatever information the director requires concerning such matters as:

- (1) The applicant's form and place of organization;
- (2) The applicant's proposed method of doing business;
- (3) The qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, any partner, officer, or director;

(4) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and

(5) The applicant's financial condition and history.

The director of licenses or the duly appointed administrator may by rule require a minimum capital for registered broker-dealers and investment advisers or prescribe a ratio between net capital and aggregate indebtedness by type or classification. [1965 c 17 § 1; 1959 c 282 § 6.]

**21.20.070 When registration effective—Written examinations.** If no denial order is in effect and no proceeding is pending under RCW 21.20.110, registration becomes effective when the applicant has successfully passed the written examination required under this section or satisfactorily demonstrated that he is exempt from the written examination requirements of this section. The director shall require as a condition of registration that the applicant (and, in the case of a corporation or partnership, all officers, directors or partners doing securities business in this state) pass a written examination as evidence of knowledge of the securities business: *Provided*, That not more than two officers of an issuer or two individual general partners or two officers of a corporate general partner may be registered as a salesman for a particular original offering of the issuer's securities without being required to pass such written examination: *And provided further*, That no such person may again register within five years as such salesman for this or any other issuer without passing the written examination. Such examination shall be given twice a year or at such more frequent intervals as the advisory committee shall direct.

Any applicant for registration as a salesman who has successfully passed, within the preceding five years, a salesman examination by a national securities association registered under the Securities and Exchange Act of 1934, (15 U.S.C. Sec. 78-a-78jj), and since the passage of such examination, has been employed by broker-dealers, who were at the time of said employment members of such an association or duly licensed in accordance with this chapter, are exempt from the written examination requirements of this section, unless otherwise provided by rule or order of the director. [1975 1st ex.s. c 84 § 4; 1974 ex.s. c 77 § 2; 1959 c 282 § 7.]

**Effective date—1974 ex.s. c 77:** See note following RCW 21.20.040.

**21.20.080 Duration of registration—Association with issuer, broker-dealer or investment adviser—Extension of licensing period.** Registration of a broker-dealer, salesman, investment adviser salesman, or investment adviser shall be effective until March 1st of the following year and may be renewed as hereinafter provided. The registration of a salesman or investment adviser salesman is not effective during any period when the salesman is not associated with an issuer or a registered broker-dealer or when the investment adviser salesman is not associated with a registered investment adviser. To be associated with an issuer, broker-dealer



or investment adviser within the meaning of this section written notice must be given to the director. When a salesman begins or terminates an association with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the director. When an investment adviser salesman begins or terminates an association with a registered investment adviser, the investment adviser salesman and registered investment adviser shall promptly notify the director.

Notwithstanding any provision of law to the contrary, the director may, from time to time, extend the duration of a licensing period for the purpose of staggering renewal periods. Such extension of a licensing period shall be by rule or regulation adopted in accordance with the provisions of chapter 34.04 RCW. Such rules and regulations may provide a method for imposing and collecting such additional proportional fee as may be required for the extended period. [1975 1st ex.s. c 84 § 5; 1959 c 282 § 8.]

**21.20.090 Renewal of registration—Financial statement—Application for a successor.** Registration of a broker-dealer, salesman, investment adviser salesman, or investment adviser may be renewed by filing with the director prior to the expiration thereof an application containing such information as the director may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, investment adviser salesman, or investment adviser filed with the director by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within ninety days. A registered broker-dealer or investment adviser may file an application for registration of a successor, and the administrator may at his discretion grant or deny the application. [1975 1st ex.s. c 84 § 6; 1961 c 37 § 3; 1959 c 282 § 9.]

**21.20.100 Accounts and records—Examination.** Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under RCW 21.20.310(1), which accounts and other records shall be prescribed by the director. All records so required shall be preserved for three years unless the director prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special or other examinations by representatives of the director, within or without this state, as the director deems necessary or appropriate in the public interest or for the protection of investors. [1959 c 282 § 10.]

**21.20.110 Denial, suspension, revocation of registration—Grounds.** The director may by order deny, suspend, or revoke registration of any broker-dealer, salesman, investment adviser salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a

broker-dealer or investment adviser, any partner, officer, or director:

(1) Has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false, or misleading with respect to any material fact;

(2) Has wilfully violated or wilfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act;

(3) Has been convicted, within the past five years, of any misdemeanor involving a security or any aspect of the securities business, or any felony involving moral turpitude;

(4) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(5) Is the subject of an order of the director denying, suspending, or revoking registration as a broker-dealer, salesman, investment adviser, or investment adviser salesman;

(6) Is the subject of an order entered within the past five years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesman, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the securities exchange act of 1934, or is the subject of a United States post office fraud order; but (a) the director may not institute a revocation or suspension proceeding under this clause more than one year from the date of the order relied on, and (b) he may not enter any order under this clause on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(7) Has engaged in dishonest or unethical practices in the securities business;

(8) Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the director may not enter an order against a broker-dealer or investment adviser under this clause without a finding of insolvency as to the broker-dealer or investment adviser; or

(9) Has not complied with a condition imposed by the director under RCW 21.20.100, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(10) The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. [1975 1st ex.s. c 84 § 7; 1965 c 17 § 2; 1959 c 282 § 11.]

**21.20.120 Denial, suspension, revocation of registration—Order—Request for, notice of hearing—Findings and conclusions.** Upon the entry of an order under RCW 21.20.110, the director shall promptly

notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman or investment adviser salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within fifteen days after the receipt of the director's notification the matter will be promptly set down for hearing. If no hearing is requested and none is ordered by the director, the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination. No order may be entered under RCW 21.20.110 denying or revoking registration without appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is a salesman or an investment adviser salesman), opportunity for hearing, and written findings of fact and conclusions of law. [1975 1st ex.s. c 84 § 8; 1959 c 282 § 12.]

**21.20.130 Cancellation of registration or application—Grounds.** If the director finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, investment adviser salesman, or salesman, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the director may by order cancel the registration or application. [1975 1st ex.s. c 84 § 9; 1959 c 282 § 13.]

**21.20.135 License as salesman or broker-dealer prerequisite to suit for commission.** No suit or action shall be brought for the collection of a commission for the sale of a security, as defined within this chapter without alleging and proving that the plaintiff was a duly licensed salesman for an issuer or a broker-dealer, or exempt under the provisions of RCW 21.20.040, or a duly licensed broker-dealer in this state or another state at the time the alleged cause of action arose. [1974 ex.s. c 77 § 3; 1961 c 37 § 10.]

**Effective date—**1974 ex.s. c 77: See note following RCW 21.20.040.

## REGISTRATION OF SECURITIES

**21.20.140 Unlawful to offer or sell unregistered securities—Exceptions.** It is unlawful for any person to offer or sell any security in this state, except securities exempt under RCW 21.20.310 or when sold in transactions exempt under RCW 21.20.320, unless such security is registered by coordination or qualification under this chapter. [1975 1st ex.s. c 84 § 10; 1959 c 282 § 14.]

## REGISTRATION BY COORDINATION

**21.20.180 Registration by coordination—Requirements—Statement, contents.** Any security for which a registration statement has been filed under the securities act of 1933 or any securities for which filings have been

made pursuant to rules and regulations A and A-M pursuant to subsection (b) of Sec. 3 of said securities act in connection with the same offering may be registered by coordination. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in RCW 21.20.340 and, if required under RCW 21.20.330, a consent to service of process meeting the requirements of that section:

- (1) One copy of the prospectus, offering circular and/or letters of notification, filed under the securities act of 1933 together with all amendments thereto;
- (2) The amount of securities to be offered in this state;
- (3) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;
- (4) Any adverse order, judgment or decree previously entered in connection with the offering by any court or the securities and exchange commission;
- (5) If the director, by rule or otherwise, requires a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;
- (6) If the director requests, any other information, or copies of any other documents, filed under the securities act of 1933; and
- (7) An undertaking to forward promptly all amendments to the federal registration statement, offering circular and/or letters of notification, other than an amendment which merely delays the effective date. [1961 c 37 § 4; 1959 c 282 § 18.]

**21.20.190 Time of taking effect of registration statement by coordination—Conditions—"Price amendment", notification.** A registration statement by coordination under RCW 21.20.180 automatically becomes effective at the moment the federal registration statement or other filing becomes effective if all the following conditions are satisfied:

- (1) No stop order is in effect and no proceeding is pending under RCW 21.20.280 and 21.20.300;
- (2) The registration statement has been on file with the director for at least ten full business days; and
- (3) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or such shorter period as the director permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the director by telephone or telegram of the date and time when the federal registration statement or other filing became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling

discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. [1961 c 37 § 5; 1959 c 282 § 19.]

**21.20.200 Failure to notify of price amendment, proof of compliance—Stop order—Waiver of certain conditions.** Upon failure to receive the required notification and post-effective amendment with respect to the price amendment referred to in RCW 21.20.190, the director may enter a stop order, without notice of hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with RCW 21.20.190, if he promptly notified the registrant by telephone or telegram (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements as to notice and post-effective amendment, the stop order is void as of the time of its entry. The director may by rule or otherwise waive either or both of the conditions specified in RCW 21.20.190(2) and (3). If the federal registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the director of the date when the federal registration statement or other filing is expected to become effective the director shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under RCW 21.20.280 and 21.20.300; but this advice by the director does not preclude the institution of such a proceeding at any time. [1959 c 282 § 20.]

## REGISTRATION BY QUALIFICATION

**21.20.210 Registration by qualification—Statements—Requirements—Audits.** Any security may be registered by qualification. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in RCW 21.20.340, and, if required under RCW 21.20.330, a consent to service of process meeting the requirements of that section:

(1) With respect to the issuer and any significant subsidiary: Its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; and a description of its physical properties and equipment.

(2) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: His name, address, and principal occupation for the past five years; the amount of securities of the issuer held by him as of a specified date within ninety days of the filing of the registration statement; the remuneration paid to all such persons in the aggregate during the past twelve months, and estimated to be paid during the next twelve months, directly or

indirectly, by the issuer (together with all predecessors, parents and subsidiaries).

(3) With respect to any person not named in RCW 21.20.210(2), owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: The information specified in RCW 21.20.210(2) other than his occupation.

(4) With respect to every promoter, not named in RCW 21.20.210(2), if the issuer was organized within the past three years: The information specified in RCW 21.20.210(2), any amount paid to him by the issuer within that period or intended to be paid to him, and the consideration for any such payment.

(5) The capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities.

(6) The kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering); the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering; the name and address of every underwriter and every recipient of a finders' fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

(7) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated, and the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price.

(8) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in RCW 21.20.210(2), (3), (4), (5) or (7) and by any person who holds or will hold ten percent or more in the aggregate of any such options.

(9) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed.

(10) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission; a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities).

(11) A copy of any prospectus or circular intended as of the effective date to be used in connection with the offering.

(12) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered.

(13) A signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered.

(14) (a) If the issuer is a commercial, industrial or extractive company in the promotional, exploratory or development stage, the following statements:

(i) Separate statements of (A) assets, (B) liabilities, and (C) capital shares, as of a date within one hundred twenty days prior to the filing of the registration statement.

(ii) A statement of cash receipts and disbursements for each of at least three full fiscal years prior to the date of the statements furnished pursuant to paragraph (i) above, and for the period, if any, between the close of the last full fiscal year and the date of such statements, or for the period of the issuer's existence if less than the period specified above.

(iii) In such statements, dollar amounts shall be extended only for cash transactions and transactions involving amounts receivable or payable in cash.

(b) If paragraph (a) does not apply to the issuer, there shall be furnished:

(i) Financial statements consisting of a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, and as of the date of the end of the last fiscal year if more than four months prior to such filing.

(ii) Statements of income, shareholders' equity, and changes in financial position for each of the three fiscal years preceding the date of the latest balance sheet and for any period between the close of the last fiscal year and the date of the latest balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years.

(iii) If any part of the proceeds of the offering is to be applied to the purchase of any business whose annual sales or revenues are in excess of fifteen percent of the registrant's sales or revenues or involves acquisition of assets in excess of fifteen percent of the registrant's assets, except as specifically exempted by the director, financial statements shall be filed which would be required if that business were the registrant.

(c) If the estimated proceeds to be received from the offering, together with the proceeds from securities registered under this section during the year preceding the date of the filing of this registration statement, exceed one hundred thousand dollars, the statements described in subsection (14)(a)(i) or (14)(b)(i) of this section as of the date of the close of the last fiscal year and the related financial statements specified in subsections (14)(a)(ii) and (14)(b)(ii) of this section for the last fiscal year shall be audited. For registration statements filed after December 31, 1975, and if such proceeds exceed five hundred thousand dollars, the financial statements specified in subsections (14)(a)(ii) and (14)(b)(ii) of this section for the last two fiscal years shall be audited.

(d) Such financial statements and such other financial information as may be prescribed by the director shall be prepared as to form and content in accordance with the rules and regulations prescribed by the director and shall be audited, as provided in paragraph (c) above, by an independent certified public accountant who is authorized to practice under the laws of the state of Washington and who is not an employee, officer, or member of the board of directors of the issuer or a holder of the securities of the issuer. The report of such independent certified public accountant shall be based upon an audit made in accordance with generally accepted auditing standards with no limitations on its scope. The director may also verify such statements by examining the issuer's books and records.

(15) The written consent of any accountant, engineer, appraiser, attorney, or any person whose profession gives authority to a statement made by him, who is named as having prepared or audited any part of the registration statement or is named as having prepared or audited a report or valuation for use in connection with the registration statement. [1973 1st ex.s. c 171 § 1; 1959 c 282 § 21.]

**Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.**

**21.20.220 Information not required when nonissuer distribution.** In the case of a nonissuer distribution, information may not be required under RCW 21.20.210 unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense. [1959 c 282 § 22.]

**21.20.230 Time of taking effect of registration statement by qualification—Conditions.** A registration statement by qualification under RCW 21.20.210 becomes effective if no stop order is in effect and no proceeding is pending under RCW 21.20.280 and 21.20.300, at three o'clock Pacific standard time in the afternoon of the fifteenth full business day after the filing of the registration statement or the last amendment, or at such earlier time as the director determines. The director may require as a condition of registration under this section that a prospectus containing any information necessary for complete disclosure of any material fact relating to the security offering be sent or given to each

person to whom an offer is made before or concurrently with (1) the first written offer made to him (other than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution, (2) the confirmation of any sale made by or for the account of any such person, (3) payment pursuant to any such sale, or (4) delivery of the security pursuant to any such sale, whichever first occurs; but the director may accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder. [1975 1st ex.s. c 84 § 11; 1974 ex.s. c 77 § 4; 1961 c 37 § 6; 1959 c 282 § 23.]

**Effective date**—1974 ex.s. c 77: See note following RCW 21.20.040.

### REGISTRATION OF RESTRICTED REAL ESTATE SECURITIES

**21.20.235 Restricted real estate securities—Registration under section authorized—Definition—Limitation.** (1) The following restricted real estate securities may be registered under this section even though they are eligible for registration under other provisions of this chapter. The rules and regulations of the securities division shall be applicable to offerings registered under this section.

(2) Restricted real estate securities are hereby defined and limited as follows:

(a) An offering of a security involving any interest in a limited partnership, general partnership, joint venture, or unincorporated association (but not a corporation) which invests in specific real property known to the investor at the time of the investment.

(b) The person selling such securities is a licensed real estate broker, associate real estate broker, or real estate salesman duly licensed with the Washington real estate division, or a securities salesman or securities broker-dealer duly licensed with the Washington securities division, and has demonstrated a knowledge of the field of real estate securities by passing an examination as required by the director.

(c) Such securities are purchased by not more than thirty-five persons. An interest purchased by husband and wife shall be considered purchased by one person.

(d) In connection with the offering of such securities, public advertisements, meetings, seminars, or other means of public solicitation may not be employed unless such advertising contains a reference to the fact that these are restricted real estate securities and are filed with the securities division and are not disallowed in accordance with the rules and regulations of the securities division. The conducting of lectures or classes in any established public or private school shall not be deemed to constitute a means of public solicitation.

(3) Offerings of restricted real estate securities shall be registered on a form prescribed by the director. Said form shall be filed with the securities division by the

selling real estate broker prior to any offer of solicitation to purchase such securities, and a copy of such completed form as filed shall be given by the registrant to each person to whom an offer is made before or concurrently with (a) the first written offer made to him (other than by means of a public advertisement), (b) the confirmation of any sale made, (c) payment pursuant to any such sale, or (d) delivery of the security pursuant to any such sale, whichever occurs first.

(4) The selling real estate broker under subsection (3) must, at the completion of the offering, file a report with the securities division which contains a list of the security holders, their addresses, and the dollar amounts purchased.

(5) A registration under subsections (1) to (3) of this section becomes effective if no stop order is in effect and no proceeding is pending under RCW 21.20.280 and 21.20.300 at three o'clock Pacific standard time in the afternoon of the fifteenth full business day after the filing of the registration statement or the last amendment, or at such earlier time as the director determines. [1975 1st ex.s. c 84 § 27.]

### GENERAL PROVISIONS REGARDING REGISTRATION OF SECURITIES

**21.20.240 Registration statements—Generally.** A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. The director may by rule or otherwise permit the omission of any item of information or document from any registration statement. [1975 1st ex.s. c 84 § 12; 1959 c 282 § 24.]

**21.20.250 Registration by qualification or coordination—Escrow—Impounding proceeds.** The director may by rule or order require as a condition of registration by qualification or coordination (1) that any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow for a period not to exceed one year after termination of the offering; and (2) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The director may by rule or order determine the conditions of any escrow or impounding required hereunder but he may not reject a depository solely because of location in another state. [1959 c 282 § 25.]

**21.20.260 Registration by coordination or qualification—Offer and sale—Duration of effectiveness.** When securities are registered by coordination or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered or by any registered broker-dealer or any person acting within the exemption provided in RCW 21.20.040. Every registration shall remain effective until its expiration date or until revoked by the director or until terminated upon request of the registrant with the consent of the director.

All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction. [1975 1st ex.s. c 84 § 13; 1974 ex.s. c 77 § 5; 1959 c 282 § 26.]

**Effective date**—1974 ex.s. c 77: See note following RCW 21.20.040.

**21.20.270 Reports by filer of statement—Fee—Annual financial statements.** (1) The director may require the person who filed the registration statement to file reports, not more often than quarterly to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which (a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the investment company act of 1940, or (b) are being offered and sold directly by or for the account of the issuer. A ten dollar fee shall accompany each such report.

(2) During the period of public offering of securities registered under the provisions of this chapter by qualification financial data or statements corresponding to those required under the provisions of RCW 21.20.210 and to the issuer's fiscal year shall be filed with the director annually, not more than one hundred twenty days after the end of each such year. Such statements at the discretion of the director or administrator shall be certified by a certified public accountant who is not an employee of the issuer, and the director may verify them by examining the issuer's books and records. The certificate of such independent certified public accountant shall be based upon an audit of not less in scope or procedures followed than that which independent public accountants would ordinarily make for the purpose of presenting comprehensive and dependable financial statements, and shall contain such information as the director may prescribe, by rules and regulations in the public interest or for the protection of investors, as to the nature and scope of the audit and the findings and opinions of the accountants. Each such report shall state that such independent certified public accountant has verified securities owned, either by actual examination, or by receipt of a certificate from the custodian, as the director may prescribe by rules and regulations. [1975 1st ex.s. c 84 § 14; 1965 c 17 § 3; 1961 c 37 § 7; 1959 c 282 § 27.]

**21.20.275 Pending registration—Notice of termination—Application for continuation.** The director may in his discretion mail notice to the registrant in any pending registration in which no action has been taken for nine months immediately prior to the mailing of such notice, advising such registrant that the pending registration will be terminated thirty days from the date of mailing unless on or before said termination date the registrant makes application in writing to the director showing good cause why it should be continued as a pending registration. If such application is not made or good cause shown, the director shall terminate the pending registration. [1974 ex.s. c 77 § 12.]

**Effective date**—1974 ex.s. c 77: See note following RCW 21.20.040.

## DENIAL, SUSPENSION AND REVOCATION OF REGISTRATION OF SECURITIES

**21.20.280 Stop orders—Grounds.** The director may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds that the order is in the public interest and that:

(1) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Any provision of this chapter or any rule, order, or condition lawfully imposed under this chapter has been wilfully violated, in connection with the offering by (a) the person filing the registration statement, (b) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (c) any underwriter;

(3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but (a) the director may not institute a proceeding against an effective registration statement under this clause more than one year from the date of the injunction relief on, and (b) he may not enter an order under this clause on the basis of an injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

(4) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(5) The offering has worked or tended to work a fraud upon purchasers or would so operate;

(6) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by RCW 21.20.180(7), or

(7) The applicant or registrant has failed to pay the proper registration fee; but the director may enter only a denial order under this subsection and he shall vacate any such order when the deficiency has been corrected;

(8) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or compensation or promoters' profits or participation, or unreasonable amounts or kinds of options. [1975 1st ex.s. c 84 § 15; 1959 c 282 § 28.]

**21.20.290 Stop order prohibited if facts known on effective date of statement.** The director may not enter a stop order against an effective registration statement on

the basis of a fact or transaction known to him when the registration statement became effective. [1959 c 282 § 29.]

**21.20.300 Notification of entry of stop order—Hearing—Findings, conclusions, modification, etc.** Upon the entry of a stop order under any part of RCW 21.20.280, the director shall promptly notify the issuer of the securities and the applicant or registrant that the order has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen days and none is ordered by the director, the director shall enter his written findings of fact and conclusions of law and the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearings to the issuer and to the applicant or registrant, shall enter his written findings of fact and conclusions of law and may modify or vacate the order. The director may modify or vacate a stop order if he finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so. [1959 c 282 § 30.]

#### EXEMPT SECURITIES

**21.20.310 Securities exempt from registration.** RCW 21.20.140 through 21.20.300, inclusive, shall not apply to any of the following securities:

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing.

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor.

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank or trust company organized or supervised under the laws of any state.

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

(5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of this state and authorized to do and actually doing business in this state.

(6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state.

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (a) subject to the jurisdiction of the interstate commerce commission; (b) a registered holding company under the public utility holding company act of 1935 or a subsidiary of such a company within the meaning of that act; (c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or (d) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect of equipment conditionally sold or leased to a railroad or public utility, if other securities issued by such railroad or public utility would be exempt under this subsection.

(8) Any security listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Midwest stock exchange, the Spokane stock exchange or any other stock exchange registered with the federal securities and exchange commission and approved by the director; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing. The director shall have power at any time by written order to withdraw the exemption so granted as to any particular security.

(9) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal, when such commercial paper is sold to the banks or insurance companies.

(10) Any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if the director is notified in writing thirty days before the inception of the plan or, with respect to plans which are in effect on the \*effective date of this chapter, within sixty days thereafter (or within thirty days before they are reopened if they are closed on the effective date of this chapter). [1975 1st ex.s. c 84 § 16; 1959 c 282 § 31.]

\*Reviser's note: The "effective date of this chapter" [1959 c 282] was midnight June 10, 1959, see preface 1959 session laws.

#### EXEMPT TRANSACTIONS

**21.20.320 Exempt transactions—Denial, revocation of certain exemptions.** Except as hereinafter in this section expressly provided, RCW 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.110, 21.20.120, 21.20.130, 21.20.135, 21.20.140, 21.20.180, 21.20.190, 21.20.200, 21.20.210, 21.20.220, 21.20.230, 21.20.240, 21.20.250, 21.20.260, 21.20.270, 21.20.280, 21.20.290 and 21.20.300, shall not apply to any of the following transactions:



(1) Any isolated transaction, or sales not involving a public offering, whether effected through a broker-dealer or not.

(2) Any nonissuer distribution of an outstanding security by a registered broker-dealer if (a) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or (b) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security.

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the director may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period.

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter.

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(9) Any transaction pursuant to offers directed by the issuer or the issuer's representative to offerees in this state: *Provided, That:*

(a) The seller reasonably believes that all the buyers are purchasing for investments and for their respective accounts, and

(b) No public or general solicitation is utilized in said offers or sales, and

(c) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer, and

(d) The number of sales by any issuer does not exceed ten individuals in twelve consecutive months and does not exceed an aggregate amount of one hundred thousand dollars, and

(e) The issuer first files a notice specifying the terms of the offer as the director may prescribe by rules and

regulations and the director does not by order disallow the exemption within the next ten full business days, and

(f) For the purpose of this exemption, if a limited partnership form of business is used, the general partner and not the partnership is deemed to be the issuer, and

(g) The issuer submits a list of security holders within thirty days after the end of each fiscal year it has operated under this exemption. Failure to file such report will not subject the issuer to retroactive loss of this exemption but will result in loss of this exemption during the period the list of security holders is due and not filed.

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber.

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (b) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days.

(12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act.

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock.

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi reorganization, stock split, reverse stock split, merger, consolidation or sale of assets.

(15) The offer or sale by a registered broker-dealer, or a person exempted from the registration requirements pursuant to RCW 21.20.040, acting either as principal or agent, of securities previously sold and distributed to the public: *Provided, That:*

(a) Such securities are sold at prices reasonably related to the current market price thereof at the time of sale, and, if such broker-dealer is acting as agent, the commission collected by such broker-dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics;

(b) Such securities do not constitute the whole or a part of an unsold allotment to or subscription or participation by such broker-dealer as an underwriter of such securities or as a participant in the distribution of such

securities by the issuer, by an underwriter or by a person or group of persons in substantial control of the issuer or of the outstanding securities of the class being distributed; and

(c) The security has been lawfully sold and distributed in this state or any other state of the United States under this or any act regulating the sale of such securities.

(16) Any transactions by a mutual or cooperative association issuing to its patrons any receipt, written notice, certificate of indebtedness or stock for a patronage dividend, or for contributions to capital by such patrons in the association provided that any such receipt, written notice or certificate made pursuant to this paragraph shall be nontransferable except in the case of death or by operation of law and shall so state conspicuously on its face.

The director may by order deny or revoke the exemption specified in subsection (2) of this section with respect to a specific security. Upon the entry of such an order, the director shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the director, the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of an opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the order. In any proceeding under this chapter, the burden of proving an exemption from a definition is upon the person claiming it. [1975 1st ex.s. c 84 § 17; 1974 ex.s. c 77 § 6; 1972 ex.s. c 79 § 1; 1961 c 37 § 8; 1959 c 282 § 32.]

**Effective date**—1974 ex.s. c 77: See note following RCW 21.20.040.

## EXEMPT SECURITIES AND TRANSACTIONS

**21.20.325 Denial, revocation, condition, of exemptions—Authority—Procedure.** The director or administrator may by order deny, revoke, or condition any exemption specified in subsection (10) of RCW 21.20.310 or in RCW 21.20.320 with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the director or administrator may by order summarily deny, revoke, or condition any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the director or administrator shall promptly notify all interested parties that it has been entered and of the reasons therefor and

that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the director or administrator, the order will remain in effect until it is modified or vacated by the director or administrator. If a hearing is requested or ordered, the director or administrator, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this section may operate retroactively. No person may be considered to have violated RCW 21.20.140 as now or hereafter amended by reason of any offer or sale effected after the entry of an order under this section if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order. [1975 1st ex.s. c 84 § 18; 1974 ex.s. c 77 § 7; 1967 c 199 § 3.]

**Effective date**—1974 ex.s. c 77: See note following RCW 21.20.040.

## CONSENT TO SERVICE OF PROCESS

**21.20.330 Consent to service of process—Service, how made.** Every applicant for registration as a broker-dealer, investment adviser, investment adviser salesman, or salesman under this chapter and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common law sense shall file with the director, in such form as he by rule prescribes, an irrevocable consent appointing the director or his successor in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or it or his successor, executor or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the director, but it is not effective unless (1) the plaintiff, who may be the director in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at it or his last address on file with the director, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows. [1975 1st ex.s. c 84 § 19; 1959 c 282 § 33.]

## INTEREST

**21.20.335 Interest charged by broker-dealers—Margin account debit balances.** The interest charged by any broker-dealer registered under this chapter and under the Federal Securities Exchange Act of 1934, as amended, with respect to a margin account debit balance which is subject to Regulation T of the Board of Governors of the Federal Reserve System and which account may be paid in full at the will of the customer,

shall not, regardless of whether the customer is a resident or a nonresident of, or the written agreement providing for such interest charge is entered into within or without, the state of Washington, be subject to the limitations imposed by chapter 19.52 RCW relating to the maximum rate of interest which may be agreed to in writing and taken and received: *Provided, however,* That the interest rate charged by such broker-dealer shall not be more than one and one-half percent higher than the effective rate of interest paid by such broker dealer for funds borrowed to make margin account purchases for his customers on the date of the customer borrowing, or such lesser rate as may be set by rules or regulations of the securities division of the department of motor vehicles. [1975 1st ex.s. c 84 § 26.]

### FEES

**21.20.340 Fees—Disposition.** The following fees shall be paid in advance under the provisions of this chapter:

(1) For registration of all securities other than investment trusts and securities registered by coordination the fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-twentieth of one percent for any excess over one hundred thousand dollars which are to be offered during that year: *Provided, however,* That an issuer may upon the payment of a fifty dollar fee renew for one additional twelve month period only the unsold portion for which the registration fee has been paid.

(2) For registration of securities issued by a face-amount certificate company or redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940, the fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-twentieth of one percent for any excess over one hundred thousand dollars which are to be offered in this state during that year: *Provided, however,* That an issuer may upon the payment of a fifty dollar fee renew for an additional twelve month period the unsold portion for which the registration fee has been paid.

(3) For registration by coordination, other than investment trusts, the fee shall be one hundred dollars for initial filing fee for the first twelve month period plus one hundred dollars for each additional twelve months in which the same offering is continued.

(4) For filing annual financial statements, the fee shall be twenty-five dollars.

(5) For filing an amended offering circular after the initial registration permit has been granted the fee shall be ten dollars.

(6) For registration of a broker-dealer or investment adviser, the fee shall be one hundred fifty dollars for original registration and fifty dollars for each annual renewal. When an application is denied or withdrawn the director shall retain one-half of the fee.

(7) For registration of a salesman or investment adviser salesman, the fee shall be twenty-five dollars for original registration with each employer and fifteen dollars for each annual renewal. When an application is denied or withdrawn the director shall retain one-half of the fee.

(8) For written examination for registration as a salesman or investment adviser salesman, the fee shall be fifteen dollars. For examinations for registration as a broker-dealer or investment adviser, the fee shall be fifty dollars.

(9) If the application for a renewal license is not received by the department on or before March 5 of each year the renewal license fee for a late license for a broker-dealer or an investment adviser shall be one hundred dollars and for a salesman or investment adviser salesman shall be twenty-five dollars. Acceptance by the director of an application for renewal after March 5 shall not be a waiver of delinquency.

(10) (a) For the transfer of a broker-dealer license to a successor, the fee shall be twenty-five dollars.

(b) For the transfer of a salesman from a broker-dealer or issuer to another broker-dealer or issuer, the transfer fee shall be fifteen dollars.

(c) For the transfer of an investment adviser salesman from an investment adviser to another investment adviser, the transfer fee shall be fifteen dollars.

(11) For certified copies of any documents filed with the director, the fee shall be the cost to the department.

(12) All fees collected under this chapter shall be turned in to the state treasury and shall not be refundable, except as herein provided. [1975 1st ex.s. c 84 § 20; 1974 ex.s. c 77 § 8; 1965 c 17 § 4; 1961 c 37 § 9; 1959 c 282 § 34.]

**Effective date—1974 ex.s. c 77:** See note following RCW 21.20.040.

**Effective date—1965 c 17:** "Section 4 of this amendatory act shall take effect July 1, 1965." [1965 c 17 § 6.]

### MISLEADING FILINGS

**21.20.350 False or misleading statements in filed documents.** It is unlawful for any person to make or cause to be made, in any document filed with the director or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect. [1959 c 282 § 35.]

### UNLAWFUL REPRESENTATIONS CONCERNING REGISTRATION OR EXEMPTION

**21.20.360 Filing, registration, statement, exemption not conclusive as to truth or completeness—Unlawful representations.** Neither the fact that an application for registration under RCW 21.20.050, a registration statement under RCW 21.20.180 or 21.20.210 has been filed, nor the fact that a person or security if effectively registered, constitutes a finding by the director that any document filed under this chapter is true, complete, and not

misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the director has passed in any way upon the merits of qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section. [1975 1st ex.s. c 84 § 21; 1959 c 282 § 36.]

### INVESTIGATIONS AND SUBPOENAS

**21.20.370 Investigations—Statement of facts relating to investigation may be permitted—Publication of information.** The director in his discretion (1) may annually, or more frequently, make such public or private investigations within or without this state as he deems necessary to determine whether any registration should be granted, denied or revoked or whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder, (2) may require or permit any person to file a statement in writing, under oath or otherwise as the director may determine, as to all the facts and circumstances concerning the matter to be investigated, and (3) shall publish information concerning any violation of this chapter or any rule or order hereunder. [1973 1st ex.s. c 171 § 2; 1959 c 282 § 37.]

**Effective date—Construction—Severability—1973 1st ex.s. c 171:** See RCW 21.20.800 and 21.20.805.

*Investigations, additional authority, scope:* RCW 21.20.700.

**21.20.380 Oaths—Subpoenas—Compelling obedience—Punishment.** For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

In case of disobedience on the part of any person to comply with any subpoena lawfully issued by the director, or on the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, the superior court of any county or the judge thereof, on application of the director, and after satisfactory evidence of wilful disobedience, may compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such a court on a refusal to testify therein. [1975 1st ex.s. c 84 § 22; 1974 ex.s. c 77 § 9; 1959 c 282 § 38.]

**Effective date—1974 ex.s. c 77:** See note following RCW 21.20.040.

### INJUNCTIONS AND OTHER REMEDIES

**21.20.390 Injunction, cease and desist order, restraining order, mandamus—Appointment of receiver or conservator for insolvent—Restitution or damages.**

Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, he may in his discretion:

(1) Issue an order directing the person to cease and desist from continuing the act or practice: *Provided*, That reasonable notice of and opportunity for a hearing shall be given: *Provided, further*, That the director may issue a temporary order pending the hearing which shall remain in effect until ten days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within fifteen days after the receipt of notice; or

(2) The director may without issuing a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The director may not be required to post a bond. If the director prevails, he shall be entitled to a reasonable attorney's fee to be fixed by the court.

(3) Whenever it appears to the director that any person who has received a permit to issue, sell or otherwise dispose of securities under this chapter, whether current or otherwise, has become insolvent, the director may petition a court of competent jurisdiction to appoint a receiver or conservator for the defendant or the defendant's assets. The director may not be required to post a bond.

(4) The director may include in any action authorized by subsection (2) of this section a claim for restitution or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action. The court shall have the power to award appropriate relief to such persons, if the court finds that enforcement of the rights of such persons by private civil action, whether by class action or otherwise, would be so burdensome or expensive as to be impractical. [1975 1st ex.s. c 84 § 23; 1974 ex.s. c 77 § 10; 1959 c 282 § 39.]

**Effective date—1974 ex.s. c 77:** See note following RCW 21.20.040.

### CRIMINAL LIABILITIES

**21.20.400 Penalty for violation of chapter—Limitation of actions.** Any person who wilfully violates any provision of this chapter except RCW 21.20.350, or who wilfully violates any rule or order under this chapter, or who wilfully violates RCW 21.20.350 knowing the statement made to be false or misleading in any material respect, shall upon conviction be fined not more than five thousand dollars or imprisoned not more than ten years, or both; but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five years after the alleged violation. [1965 c 17 § 5; 1959 c 282 § 40.]

**21.20.410 Attorney general, prosecuting attorney may institute criminal proceeding—Referral of evidence by director.** The director may refer such evidence as may be available concerning violations of this chapter or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may in his discretion, with or without such a reference, institute the appropriate criminal proceedings under this chapter. [1959 c 282 § 41.]

**21.20.420 Criminal punishment, chapter not exclusive.** Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law. [1959 c 282 § 42.]

### CIVIL LIABILITIES

**21.20.430 Civil liabilities—Survival, limitation of actions—Waiver of chapter void.** (1) Any person, who offers or sells a security in violation of any provisions of RCW 21.20.140 through 21.20.220 and 21.20.230, or offers or sells a security by means of fraud or misrepresentation is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at eight percent per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at eight percent per annum from the date of disposition.

(2) Any person who buys a security by means of fraud or misrepresentation is liable to the person selling the security to him, who may sue either at law or in equity to recover the security, together with any income received on the security, costs, and reasonable attorneys' fees or if the security cannot be recovered, the value of the security, any profits arising from the security, costs, and reasonable attorneys' fees.

(3) Every person who directly or indirectly controls a seller or buyer liable under subsection (1) or (2) above, every partner, officer, or director (or person occupying a similar status or performing similar functions) or employee of such a seller or buyer who materially aids in the transaction, and every broker-dealer, salesman or person exempt under the provisions of RCW 21.20.040 who materially aids in the transaction is also liable jointly and severally with and to the same extent as the seller or buyer, unless he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(4) (a) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

(b) No person may sue under this section more than three years after the contract of sale. No person may sue under this section if the buyer or seller receives a written

rescission offer, which has been passed upon by the director before suit and at a time when he owned the security, to refund the consideration paid together with interest at eight percent per annum from the date of payment, less the amount of any income received on the security in the case of a buyer, or plus the amount of income received on the security in the case of a seller.

(5) No person who has made or engaged in the performance of any contract in violation of any provision of this chapter or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this chapter or any rule or order hereunder is void. [1975 1st ex.s. c 84 § 24; 1974 ex.s. c 77 § 11; 1967 c 199 § 2; 1959 c 282 § 43.]

**Effective date—1974 ex.s. c 77:** See note following RCW 21.20.040.

### DISCONTINUANCE OF VIOLATIONS

**21.20.435 Assurance of discontinuance of violations—Acceptance—Filing.** In the enforcement of this chapter, the director may accept an assurance of discontinuance of violations of the provisions of this chapter from any person deemed by the director to be in violation hereof. Any such assurance shall be in writing, may state that the person giving such assurance does not admit to any violation of this chapter, and shall be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston county. Proof of failure to comply with the assurance of discontinuance shall be prima facie evidence of a violation of this chapter. [1974 ex.s. c 77 § 13.]

**Effective date—1974 ex.s. c 77:** See note following RCW 21.20.040.

### JUDICIAL REVIEW OF ORDERS

**21.20.440 Judicial review of order—Modification of order by director on additional evidence.** Any person aggrieved by a final order of the director may obtain a review of the order in the county in which he resides or in any other court of competent jurisdiction by filing in court, within sixty days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the director, and thereupon the director shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. No objection to the order may be considered by the court unless it was urged before the director or there were reasonable grounds for failure to do so. The findings of the director as to the facts, if supported by substantial evidence, are conclusive. If either party applies to the court for leave to

adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the director, the court may order the additional evidence to be taken before the director and to be adduced upon the hearing in such manner and upon such conditions as the court may consider proper. The director may modify his findings as the facts, by reason of the additional evidence so taken; and he shall file any modified or new findings, which if supported by substantial evidence shall be conclusive, and any recommendation for the modification or setting aside of the original order. The commencement of proceedings under this action [section] does not, unless specifically ordered by the court, operate as a stay of the director's order. [1959 c 282 § 44.]

#### ADMINISTRATION OF CHAPTER

**21.20.450 Administration of chapter—Rules and forms, publication—Cooperation with other state and federal authorities.** The administration of the provisions of this chapter shall be under the \*department of licenses. The director may from time to time make, amend, and rescind such rules and forms as are necessary to carry out the provisions of this chapter, including rules defining any term, whether or not such term is used in the Washington securities law. The director may classify securities, persons, and matters within his jurisdiction, and prescribe different requirements for different classes. No rule or form, may be made unless the director finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter. In prescribing rules and forms the director may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and forms of the director shall be published. [1975 1st ex.s. c 84 § 25; 1959 c 282 § 45.]

**\*Reviser's note:** "department of licenses" abolished and powers and duties transferred to department of motor vehicles. See note following RCW 21.20.005.

**21.20.460 Administrator of securities—Appointment, qualifications, term, etc.** The director shall appoint a competent person to administer this chapter who shall be designated administrator of securities. The director shall delegate to the administrator such powers, subject to the authority of the director, as may be necessary to carry out the provisions of this chapter. The administrator shall hold office at the pleasure of the director. [1959 c 282 § 46.]

**21.20.470 Compensation, travel expenses of administrator and employees.** The administrator, and any person employed by him, shall be paid, in addition to regular compensation, travel expenses incurred by each of them in the performance of their duties under this chapter in

accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 64; 1959 c 282 § 47.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**21.20.480 Unlawful use or disclosure of filed information.** It is unlawful for the director or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the director and which is not made public. The director or any of his officers or employees shall not disclose any such information or the fact that any investigation is being made except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the director or any of his officers or employees. [1959 c 282 § 48.]

**21.20.490 No liability under chapter for act in good faith.** No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the director, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason. [1959 c 282 § 49.]

**21.20.500 Administrative hearings public—Exception.** Every hearing in an administrative proceeding shall be public unless the director in his discretion grants a request joined in by all the respondents that the hearing be conducted privately. [1959 c 282 § 50.]

**21.20.510 Document filed when received—Register—Inspection of register, information, etc.** A document is filed when it is received by the director. The director shall keep a register of all applications for registration and registration statements which are or have ever been effective under this chapter and all denial, suspension, or revocation orders which have ever been entered under this chapter. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the director prescribes. [1959 c 282 § 51.]

**21.20.520 Copies of entries, documents to be furnished—Copies as prima facie evidence.** Upon request and at such reasonable charges as he prescribes, the director shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified. [1959 c 282 § 52.]

**21.20.530 Interpretative opinions by director.** The director in his discretion may honor requests from interested persons for interpretative opinions. [1959 c 282 § 53.]

#### PROOF OF EXEMPTION

**21.20.540 Exemptions and exceptions, burden of proof.** In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it. [1959 c 282 § 54.]

#### ADVISORY COMMITTEE

**21.20.550 State advisory committee—Composition, appointment, qualifications.** There is hereby created a state advisory committee which shall consist of seven members to be appointed by the governor on the basis of their experience and qualifications. The membership shall be selected, insofar as possible, on the basis of giving both geographic representation and representation to all phases of the securities business including the legal and accounting professions. [1973 1st ex.s. c 171 § 3; 1959 c 282 § 55.]

**Effective date—Construction—Severability—1973 1st ex.s. c 171:** See RCW 21.20.800 and 21.20.805.

**21.20.560 State advisory committee—Chairman, secretary—Meetings.** (1) The committee shall select a chairman and a secretary from their group.

(2) Regular meetings may be held quarterly, or semi-annually, and special meetings may be called by the chairman upon at least seven days' written notice to each committee member sent by regular mail. [1973 1st ex.s. c 171 § 4; 1959 c 282 § 56.]

**Effective date—Construction—Severability—1973 1st ex.s. c 171:** See RCW 21.20.800 and 21.20.805.

**21.20.570 State advisory committee—Terms—Vacancies.** The first members of the committee shall hold office as follows: Two members to serve two years; two members to serve three years; and three members to serve four years. Upon the expiration of said original terms subsequent appointment shall be for four years except in the case of a vacancy, in which event appointment shall be only for the remainder of the unexpired term in which the vacancy occurs. [1959 c 282 § 57.]

**21.20.580 State advisory committee—Duties—Examining committee—Examinations.** The advisory committee shall:

(1) Serve in an advisory capacity to the director on all matters pertaining to this chapter.

(2) Acquaint themselves fully with the operations of the director's office as to the administration of securities, broker-dealers, salesmen, and investment advisers, and periodically recommend to the director such changes in the rules and regulations of the department in connection therewith as they deem advisable.

(3) Prepare and publish a mimeographed report on their recommendations.

(4) Appoint three of their members to act as an examining committee. All examinations required by this chapter shall be conducted in the manner provided in chapter 43.24 RCW. The examining committee shall be subject to the provisions of chapter 43.24 RCW unless otherwise provided by this chapter. [1959 c 282 § 58.]

**21.20.590 State advisory committee—Compensation—Travel expenses.** The advisory committee shall be reimbursed for their travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended: *Provided*, That members acting as an examining committee shall be paid in addition to expenses allowed twenty-five dollars per day for conducting examinations provided for herein. [1975-'76 2nd ex.s. c 34 § 65; 1959 c 282 § 59.]

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

#### ADDITIONAL PROVISIONS

**21.20.700 Investigations and examinations—Additional authority—Scope.** In addition to the authority conferred in RCW 21.20.370 the director at any time during a public offering whether registered or not, or one year thereafter or at any time that any debt or equity securities which have been sold to the public pursuant to registration under chapter 21.20 RCW are still outstanding obligation of the issuer: (1) May investigate and examine the issuer for the purpose of ascertaining whether there have been violations of chapter 21.20 RCW, regulations thereunder, or conditions expressed in the permit for the public offering; (2) may require or permit any person to file a statement in writing, under oath or otherwise as the director may determine, as to all the facts and circumstances concerning the matter to be investigated; and (3) may publish information concerning any violation of this chapter or any rule or order hereunder. Said examination and investigation, whether conducted within or without this state, shall include the right to reasonably examine the issuer's books, accounts, records, files, papers, feasibility reports, other pertinent information and obtain written permission from the issuer to consult with the independent accountant who audited the financial statements of the issuer. The reasonable costs of such examination shall be paid by the issuer to the director: *Provided, however*, The issuer shall not be liable for the costs of second or subsequent examinations during a calendar year. [1973 1st ex.s. c 171 § 5.]

**Effective date—Construction—Severability—1973 1st ex.s. c 171:** See RCW 21.20.800 and 21.20.805.

*Investigations:* RCW 21.20.370.

**21.20.705 Debenture companies—Definition.** When used in this chapter, unless the context otherwise requires, "debenture company" means an issuer of any securities which is required to be registered under the provisions of this chapter and which is not exempted from such registration requirements by RCW 21.20.310; which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, leasing, or



trading in real or chattel mortgages, deeds of trust, or land or personal property contracts, or security agreements and financing statements under the uniform commercial code, or land contracts; and which has issued or proposes to issue notes, debentures and other obligations for money used or to be used as capital of the issuer. [1973 1st ex.s. c 171 § 6.]

**Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.**

**21.20.710 Debenture companies—Paid-in capital requirements—Waiver.** No debenture company shall offer for sale any security other than capital stock which would result in the violation of the following paid-in capital requirements:

(1) For outstanding securities other than capital stock totaling \$1 to \$500,000 there must be at least \$50,000 paid-in capital; said paid-in capital must be in the form of cash or comparable liquid assets as defined by rules and regulations; and

(2) For outstanding securities other than capital stock totaling \$500,001 to \$750,000 there must be at least \$75,000 paid-in capital; said paid-in capital must be in the form of cash or comparable liquid assets as defined by rules and regulations; and

(3) For outstanding securities other than capital stock totaling \$750,001 to \$1,000,000 there must be at least \$100,000 paid-in capital; said paid-in capital must be in the form of cash or comparable liquid assets as defined by rules and regulations.

In addition to the requirements set forth in subsections (1), (2), and (3) of this section, to the extent that a debenture company has outstanding securities other than capital stock totaling in excess of \$1,000,000, the debenture company's paid-in capital, equity reserves, and undivided profits shall be at least five percent of the outstanding securities in excess of \$1,000,000, but not over \$10,000,000, and two and one-half percent additional paid-in capital, equity reserves, and undivided profits for all securities in excess of \$10,000,000: *Provided*, That the director may for good cause in the interest of the existing investors, waive this requirement: *Provided further*, That if the director waives the minimum requirements set forth in this section, any debenture company taking advantage of this waiver shall set aside into its equity reserves and undivided profits, at least five percent of the net earnings of each year, until such time as they can meet the requirements without waiver from the director. [1973 1st ex.s. c 171 § 7.]

**Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.**

**21.20.715 Debenture companies—Maturity date requirements.** Any debenture company offering debt securities to the public shall provide that at least fifty percent of the amount of those securities sold after July 1, 1973, shall have maturity dates of two years or more. [1973 1st ex.s. c 171 § 8.]

**Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.**

**21.20.720 Debenture companies—Prohibited activities by directors or officers.** (1) A director or officer of a debenture company shall not:

(a) Have any interest, direct or indirect, in the gains or profits of the debenture company, except to receive dividends upon the amounts contributed by him, the same as any other depositor or shareholder and under the same regulations and conditions: *Provided*, That nothing in this subsection shall be construed to prohibit salaries as may be approved by the debenture company's board of directors;

(b) Become a member of the board of directors or a controlling shareholder of another debenture company or a bank, trust company, or national banking association, of which board enough other directors or officers of the debenture company are members so as to constitute with him a majority of the board of directors.

(2) Neither a director nor an officer shall:

(a) For himself or as agent or partner of another, directly or indirectly use any of the funds held by the debenture company, except to make such current and necessary payments as are authorized by the board of directors;

(b) Receive directly or indirectly and retain for his own use any commission on or benefit from any loan made by the debenture company, or any pay or emolument for services rendered to any borrower from the debenture company in connection with such loan;

(c) Become an indorser, surety, or guarantor, or in any manner an obligor, for any loan made from the debenture company and except when approval has been given by the director of the department of motor vehicles or his administrator of securities upon recommendation by the company's board of directors.

(d) For himself or as agent or partner of another, directly or indirectly borrow any of the funds held by the debenture company, or become the owner of real property upon which the debenture company holds a mortgage. A loan to or a purchase by a corporation in which he is a stockholder to the amount of fifteen percent of the total outstanding stock, or in which he and other directors or officers of the debenture company hold stock to the amount of twenty-five percent of the total outstanding stock, shall be deemed a loan to or a purchase by such director or officer within the meaning of this section, except when the loan to or purchase by such corporation occurred without his knowledge or against his protest. [1973 1st ex.s. c 171 § 9.]

**Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.**

**21.20.725 Debenture companies—Certificates of debenture—Requirements.** (1) Debenture companies shall not issue certificates of debentures in passbook form, or in such other form which suggests to the holder thereof that such moneys may be withdrawn on demand.

(2) Each certificate of debenture or an application for a certificate shall specify on the face of the certificate or application therefor, in twelve point bold face type or larger, that such debenture is not insured by the United States government, the state of Washington, or any agency thereof. [1973 1st ex.s. c 171 § 10.]

**Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.**

**21.20.740 Reports—Requirements.** (1) Every issuer which has registered securities under Washington state securities law shall file with the director reports described in subsection (2) of this section. Such reports shall be filed with the director not more than one hundred twenty days (unless extension of time is granted by the director) after the end of the issuer's fiscal year.

(2) The reports required by subsection (1) of this section shall contain such information, statements and documents regarding the financial and business conditions of the issuer and the number and description of securities of the issuer held by its officers, directors and controlling shareholders and shall be in such form and filed at such annual times as the director may require by rule or order. For the purposes of RCW 21.20.720, 21.20.740 and 21.20.745, a "controlling shareholder" shall mean a person who is directly or indirectly the beneficial holder of more than ten percent of the outstanding voting securities of an issuer.

(3) (a) The reports described in subsection (2) of this section shall include financial statements corresponding to those required under the provisions of RCW 21.20.210 and to the issuer's fiscal year setting forth in comparative form the corresponding information for the preceding year and such financial statements shall be furnished to all shareholders within one hundred twenty days (unless extension of time is granted by the director) after the end of such year, but at least twenty days prior to the date of the annual meeting of shareholders.

(b) Such financial statements shall be prepared as to form and content in accordance with rules and regulations prescribed by the director and shall be audited (except that financial statements filed prior to July 1, 1976 need be audited only as to the most recent fiscal year) by an independent certified public accountant who is not an employee, officer or member of the board of directors of the issuer or a holder of securities of the issuer. The report of such independent certified public accountant shall be based upon an audit made in accordance with generally accepted auditing standards with no limitations on its scope.

(4) The director may by rule or order exempt any issuer or class of issuers from this section for a period of up to one year if he finds that the filing of any such report by a specific issuer or class of issuers is not necessary for the protection of investors and the public interest.

(5) For the purposes of RCW 21.20.740 and 21.20.745, "issuer" does not include issuers of:

(a) Securities registered by the issuer pursuant to section 12 of the securities and exchange act of 1934 as now or hereafter amended or exempted from registration under that act on a basis other than the number of shareholders and total assets.

(b) Securities which are held of record by less than two hundred persons or whose total assets are less than \$500,000 at the close of the issuer's fiscal year.

(6) Any issuer who has been required to file under RCW 21.20.740 and who subsequently becomes excluded from the definition of "issuer" by virtue of RCW 21.20.740(5) must file a certification setting forth the basis on which they claim to no longer be an issuer within the meaning of \*this act.

(7) The reports filed under this section shall be filed and maintained by the director for public inspection. Any person is entitled to receive copies thereof from the director upon payment of the reasonable costs of duplication.

(8) Filing of reports pursuant to this section shall not constitute an approval thereof by the director or a finding by the director that the report is true, complete and not misleading. It shall be unlawful to make, or cause to be made, to any prospective purchaser, seller, customer or client, any representation inconsistent with this subsection. [1973 1st ex.s. c 171 § 11.]

**\*Reviser's note:** "this act" apparently refers to 1973 1st ex.s. c 171 which consists of amendments to RCW 21.20.210, 21.20.370, 21.20.550, 21.20.560, and to RCW 21.20.700-21.20.805.

**Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.**

**21.20.745 Reports—Violations of reporting requirements—Penalties—Contribution.** (1) It is unlawful for any person, including the officers and directors of any issuer, to fail to file a report required by RCW 21.20.740 or to file any such report which contains an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading unless such person did not know, and in the exercise of reasonable care could not have known, of the failure, untruth or omission. In addition to any other penalties or remedies provided by chapter 21.20 RCW, each officer and director of an issuer which violates this subsection shall be personally liable for damages as provided in subsection (2) of this section if such officer or director:

(a) Had actual notice of the issuer's duty to file reports;

(b) Knew, or in the exercise of reasonable care could have known of the violation; and

(c) Could have prevented the violation.

(2) Any issuer and other person who violate subsection (1) of this section shall be liable jointly and severally for the damages occasioned by such violation, together with reasonable attorney fees and costs to any person who, during the continuation of the violation and without actual notice of the violation, purchases or sells any securities of the issuer within six months following the date the violation commenced.

(3) No suit or action may be commenced under subsection (2) of this section more than one year after the purchase or sale.

(4) Any person held liable under this section shall be entitled to contribution from those jointly and severally liable with him. [1973 1st ex.s. c 171 § 12.]

**Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.**

**21.20.750 Reports—Suspension of sale of securities until reporting requirements complied with.** In case of a violation of RCW 21.20.740 and 21.20.745, the director may suspend sale or trading by or through a broker-dealer of the securities of the issuer until the failure to file a report or statement or the inaccuracy or omissions in any report or statement are remedied as determined by the director. [1973 1st ex.s. c 171 § 13.]

**Effective date—Construction—Severability—1973 1st ex.s. c 171:** See RCW 21.20.800 and 21.20.805.

**21.20.800 Severability—1973 1st ex.s. c 171.** If any provision of \*this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 171 § 15.]

**\*Reviser's note:** "this 1973 amendatory act", see note following RCW 21.20.805.

**21.20.805 Effective date—Construction—1973 1st ex.s. c 171.** \*This 1973 amendatory act shall take effect on January 1, 1975: *Provided however,* That debenture companies registered pursuant to chapter 21.20 RCW as of January 1, 1974, and for which there are no stop orders outstanding shall have until January 1, 1975, to comply with the requirements of section 7 of this 1973 amendatory act. [1973 1st ex.s. c 171 § 14.]

**\*Reviser's note:** "This 1973 amendatory act" [1973 1st ex.s. c 171] consists of amendments to RCW 21.20.210, 21.20.370, 21.20.550, 21.20.560 and to RCW 21.20.700-21.20.805. Section 7 is codified as RCW 21.20.710.

## STATUTORY POLICY

**21.20.900 Construction to secure uniformity.** This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of this chapter with the related federal regulation. [1959 c 282 § 61.]

## SEVERABILITY OF PROVISIONS

**21.20.905 Severability—1959 c 282.** If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [1959 c 282 § 62.]

## REPEAL AND SAVING PROVISIONS

**21.20.910 Saving—Civil, criminal proceedings.** Prior law exclusively governs all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this chapter, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought within any

period of limitation which applied when the cause of action accrued and in any event within two years after the \*effective date of this chapter. [1959 c 282 § 63.]

**\*Reviser's note:** The "effective date of this chapter" is midnight June 10, 1959, see preface 1959 session laws.

**21.20.915 Saving—Prior effective registrations.** All effective registrations under prior law and all conditions imposed upon such registrations remain in effect so long as they would have remained in effect if they had become effective under this chapter. They are considered to have been filed, entered, or imposed under this chapter. All dealers who are duly registered as brokers and all salesmen and issuers' agents who are duly registered as agents under said securities act, mining act or oil and mining leases act, on the effective date of this chapter shall be deemed to be duly registered under and subject to the provisions of this chapter, such registration to expire on the 30th day of June of the year in which this chapter becomes effective and to be subject to renewal as provided in this chapter. [1959 c 282 § 64.]

**Reviser's note:** The effective date of this chapter is midnight June 10, 1959, see preface 1959 session laws.

**21.20.920 Application of prior law.** Prior law applies in respect to any offer or sale made within one year after the \*effective date of this chapter pursuant to an offering begun in good faith before its effective date on the basis of an exemption available under prior law. [1959 c 282 § 65.]

**\*Reviser's note:** The "effective date of this chapter" is midnight June 10, 1959, see preface 1959 session laws.

**21.20.925 Judicial review of prior administrative orders.** Judicial review of all administrative orders as to which review proceedings have not been instituted by the \*effective date of this chapter are governed by RCW 21.20.440 except that no review proceeding may be instituted unless the petition is filed within any period of limitation which applied to a review proceeding when the order was entered and in any event within sixty days after the \*effective date of this chapter. [1959 c 282 § 66.]

**\*Reviser's note:** The "effective date of this chapter" is midnight June 10, 1959, see preface 1959 session laws.

**21.20.930 Solicitation permits under insurance laws not limited.** Nothing in this chapter shall in any way limit the provisions of RCW 48.06.030. [1959 c 282 § 67.]

**21.20.935 Repealer.** The following acts and parts of acts are hereby repealed:

(1) Chapter 69, Laws of 1923; chapter 97, Laws of 1935; chapter 182, Laws of 1937; chapter 124, Laws of 1939; chapter 169, Laws of 1943; chapter 231, Laws of 1943; chapter 189, Laws of 1947; chapter 150, Laws of 1949; chapter 230, Laws of 1951; and RCW 21.04.010 through 21.04.220; and

(2) Chapter 178, Laws of 1937; chapter 64, Laws of 1951; and RCW 21.08.010 through 21.08.120; and

(3) Chapter 110, Laws of 1939 and RCW 21.12.010 through 21.12.080. [1959 c 282 § 68.]

### SHORT TITLE

**21.20.940 Short title.** This chapter shall be known as "The Securities Act of Washington." [1959 c 282 § 69.]

### Chapter 21.24 UNIFORM GIFTS TO MINORS ACT

#### Sections

21.24.010	Definitions.
21.24.020	Manner of making gift.
21.24.030	Effect of gift.
21.24.040	Duties and powers of custodian.
21.24.050	Custodian's expenses, compensation, bond and liabilities.
21.24.060	Exemption of third persons from liability.
21.24.070	Resignation, death or removal of custodian—Bond— Appointment of successor custodian.
21.24.080	Accounting by custodian.
21.24.090	Construction—1959 c 202.
21.24.091	Construction—1967 ex.s. c 88.
21.24.100	Short title.
21.24.900	Severability—1959 c 202.

*Banks and trust companies: Title 30 RCW.*

*Corporations: Titles 23, 23A and 24 RCW.*

*Guardians, generally: Chapters 11.88, 11.92 RCW.*

*Infants: Chapter 26.28 RCW.*

*Mutual savings banks: Title 32 RCW.*

*Probate law and procedure: Title 11 RCW.*

*Savings and loan associations: Title 33 RCW.*

*State lottery, payment of prizes to minor, applicability of chapter 21.24 RCW: RCW 67.67.160.*

**21.24.010 Definitions.** In this chapter, unless the context otherwise requires: (1) An "adult" is a person who has attained the age of eighteen years.

(2) A "bank" is a bank, trust company, national banking association, or mutual savings bank.

(3) A "broker" is a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business.

(4) "Court" means the superior courts of the state of Washington.

(5) The "custodial property" includes:

(a) All securities, life insurance policies, annuity contracts and money under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this chapter.

(b) the income from the custodial property; and

(c) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, surrender or other disposition of such securities, money, life insurance policies, annuity contracts and income.

(6) A "custodian" is a person so designated in a manner prescribed in this chapter; the term includes a successor custodian.

(7) A "financial institution" is a bank, a federal savings and loan association, a savings institution chartered

and supervised as a savings and loan or similar institution under federal law or the laws of a state or a federal credit union or credit union chartered and supervised under the laws of a state; an "insured financial institution" is one, deposits (including a savings, share, certificate or deposit account) in which are, in whole or in part, insured by the federal deposit insurance corporation, or by the federal savings and loan insurance corporation, or by a deposit insurance fund approved by this state.

(8) A "guardian" of a minor means the general guardian, guardian, tutor or curator of his property, or estate appointed or qualified by a court of this state or another state.

(9) An "issuer" is a person who places or authorizes the placing of his name on a security (other than as a transfer agent) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.

(10) A "legal representative" of a person is his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate.

(11) A "life insurance policy or annuity contract" means a life insurance policy or annuity contract issued by an insurance company authorized to do business in this state on the life of a minor to whom a gift of the policy or contract is made in the manner prescribed in this chapter or on the life of a member of the minor's family.

(12) A "member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption.

(13) A "minor" is a person who has not attained the age of eighteen years.

(14) A "security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate, or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

(15) A "transfer agent" is a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities.

(16) A "trust company" is a bank authorized to exercise trust powers. [1971 ex.s. c 292 § 30; 1967 ex.s. c 88 § 1; 1959 c 202 § 1.]

**Severability**—1971 ex.s. c 292: See note following RCW 26.28.010.

**Effective date**—1967 ex.s. c 88: "The effective date of this 1967 act is July 1, 1967." [1967 ex.s. c 88 § 20.] This applies to RCW 21.24.010–21.24.040, 21.24.060, 21.24.070, 21.24.091 and 21.25.010–21.25.900.

**Severability**—1967 ex.s. c 88: See RCW 21.25.900.

**21.24.020 Manner of making gift.** (1) An adult person may, during his lifetime, or by testamentary disposition, make a gift of a security, a life insurance policy or annuity contract or money to a person who is a minor on the date of the gift: (a) If the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person or a trust company, followed, in substance, by the words: "As custodian for (name of minor) under the Washington uniform gifts to minors act",

(b) if the subject of the gift is a security not in registered form, by delivering it to an adult other than the donor or a trust company accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

**"GIFT UNDER THE WASHINGTON UNIFORM GIFTS TO MINORS ACT**

I, (name of donor), hereby deliver to (name of custodian) as custodian for (name of minor) under the Washington uniform gifts to minors act, the following security(ies): (Insert an appropriate description of the security or securities delivered sufficient to identify it or them) \_\_\_\_\_ (signature of donor) (name of custodian) hereby acknowledges receipt of the above described security(ies) as custodian for the above minor under the Washington uniform gifts to minors act.

Dated: \_\_\_\_\_ (signature of custodian)"

(c) if the subject of the gift is money, by paying or delivering it to a broker or a financial institution for credit to an account in the name of the donor, another adult or a trust company, followed, in substance, by the words: "As custodian for (name of minor) under the Washington uniform gifts to minors act."

(d) if the subject of the gift is a life insurance policy or annuity contract, by causing the ownership of the policy or contract to be registered with the issuing insurance company in the name of the donor, another adult or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the Washington uniform gifts to minors act".

(2) Any gift made in a manner prescribed in subsection (1) may be made to only one minor and only one person may be the custodian.

(3) A donor who makes a gift to a minor in a manner prescribed in subsection (1) shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this subsection, nor his designation of an ineligible person as custodian, nor renunciation by the person designated as custodian

affects the consummation of the gift. [1967 ex.s. c 88 § 2; 1959 c 202 § 2.]

**21.24.030 Effect of gift.** (1) A gift made in a manner prescribed in this chapter is irrevocable and conveys to the minor indefeasibly vested legal title to the security, life insurance policy, annuity contract or money given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this chapter.

(2) By making a gift in a manner prescribed in this chapter, the donor incorporates in his gift all the provisions of this chapter and grants to the custodian, and to any issuer, transfer agent, bank, financial institution, life insurance company, broker or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this chapter. [1967 ex.s. c 88 § 3; 1959 c 202 § 3.]

**21.24.040 Duties and powers of custodian.** (1) The custodian shall collect, hold, manage, invest and reinvest the custodial property.

(2) The custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

(3) The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education.

(4) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of eighteen years, or, if the minor dies before attaining the age of eighteen years, he shall thereupon deliver or pay it over to the estate of the minor.

(5) The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain a security given to the minor in a manner prescribed in this chapter or hold money so given in an account in a financial institution to which it was paid or delivered by the donor.

(6) The custodian may sell, exchange, convert, surrender or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through

a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

(7) The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Washington uniform gifts to minors act". The custodian shall hold all money which is custodial property in an account with a broker or in an insured financial institution in the name of the custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Washington uniform gifts to minors act" The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

(8) The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of fourteen years.

(9) A custodian has, with respect to the custodial property, in addition to the rights and powers provided in this chapter, all the rights and powers which a guardian has with respect to property not held as custodial property.

(10) If the subject of the gift is a life insurance policy or annuity contract, the custodian:

(a) in his capacity as custodian, has all the incidents of ownership in the policy or contract to the same extent as if he were the owner, except that the designated beneficiary of any policy or contract on the life of the minor shall be the minor's estate and the designated beneficiary of any policy or contract on the life of a person other than the minor shall be the custodian as custodian for the minor for whom he is acting; and

(b) may pay premiums on the policy or contract out of the custodial property. [1971 ex.s. c 292 § 31; 1967 ex.s. c 88 § 4; 1959 c 202 § 4.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**21.24.050 Custodian's expenses, compensation, bond and liabilities.** (1) A custodian is entitled to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties.

(2) A custodian may act without compensation for his services.

(3) Unless he is a donor, a custodian may receive from the custodial property reasonable compensation for his services determined by one of the following standards in the order stated: (a) A direction by the donor when the gift is made;

(b) An order of the court.

(4) Except as otherwise provided in this chapter, a custodian shall not be required to give a bond for the performance of his duties.

(5) A custodian not compensated for his services is not liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in this chapter. [1959 c 202 § 5.]

**21.24.060 Exemption of third persons from liability.** No issuer, transfer agent, bank, life insurance company, broker or other person or financial institution acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated as custodian by the purported donor or by the custodian or purporting to act as a custodian has been duly designated or whether any purchase, sale or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by this chapter, or is obliged to inquire into the validity or propriety under this chapter of any instrument of instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him. No issuer, transfer agent, bank, life insurance company, broker or other person or financial institution acting on any instrument of designation of a successor custodian, executed as provided in subsection (1) of RCW 21.24-.070, as now or hereafter amended, by a minor to whom a gift has been made in a manner prescribed in this chapter, and who has attained the age of fourteen years, is responsible for determining whether the person designated by the minor as successor custodian has been duly designated, or is obliged to inquire into the validity or propriety under this chapter of the instrument of designation. [1967 ex.s. c 88 § 5; 1959 c 202 § 6.]

**21.24.070 Resignation, death or removal of custodian—Bond—Appointment of successor custodian.**

(1) Only an adult member of the minor's family, a guardian of the minor or a trust company is eligible to become successor custodian. A custodian may designate his successor by executing and dating an instrument of designation before a subscribing witness other than the successor; the instrument of designation may but need not contain the resignation of the custodian. If the custodian does not so designate his successor before he dies or becomes legally incapacitated, and the minor has attained the age of fourteen years, the minor may designate a successor custodian by executing an instrument of designation before a subscribing witness other than the successor. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed by this chapter.

(2) The designation of a successor custodian as provided in subsection (1) takes effect as to each item of the custodial property when the custodian resigns, dies or becomes legally incapacitated and the custodian or his legal representative:



(a) causes the item if it is a security in registered form or a life insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance policy or annuity contract, in the name of the successor custodian followed, in substance, by the words: "as custodian for (name of minor) under the Washington uniform gifts to minors act"; and

(b) delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof and any additional instruments required for the transfer thereof to the successor custodian.

(3) A custodian who executes an instrument of designation of his successor containing the custodian's resignation as provided in subsection (1) shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in subsection (1) by the custodian or, if none, by the minor if he has no guardian and has attained the age of fourteen years, or in the possession and control of the guardian of the minor if he has a guardian. If the custodian has executed as provided in subsection (1) more than one instrument of designation, his legal representative shall treat the instrument dated on an earlier date as having been revoked by the instrument dated on a later date.

(4) If a person designated as custodian or as successor custodian by the custodian as provided in subsection (1) is not eligible, dies or becomes legally incapacitated before the minor attains the age of eighteen years and if the minor has a guardian, the guardian of the minor shall be successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated as provided in subsection (1), a donor, his legal representative, the legal representative of the custodian or an adult member of the minor's family may petition the court for the designation of a successor custodian.

(5) A donor, the legal representative of a donor, a successor custodian, an adult member of the minor's family, a guardian of the minor or the minor, if he has attained the age of fourteen years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.

(6) Upon the filing of a petition as provided in this section, the court shall grant an order, directed to the persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor. [1971 ex.s. c 292 § 32; 1967 ex.s. c 88 § 6; 1959 c 202 § 7.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**21.24.080 Accounting by custodian.** (1) The minor, if he has attained the age of fourteen years, or the legal representative of the minor, an adult member of the minor's family, or a donor or his legal representative may petition the court for an accounting by the custodian or his legal representative.

(2) The court, in a proceeding under this chapter or otherwise, may require or permit the custodian or his legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof. [1959 c 202 § 8.]

**21.24.090 Construction—1959 c 202.** (1) This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(2) This chapter shall not be construed as providing an exclusive method for making gifts to minors. [1959 c 202 § 9.]

**21.24.091 Construction—1967 ex.s. c 88.** The provisions of chapter 202, Laws of 1959 hereby amended as hereby amended shall be construed as a continuation of chapter 202, Laws of 1959 hereby amended according to the language employed and not as a new enactment. This amendment of chapter 202, Laws of 1959 hereby amended does not affect gifts made in a manner prescribed therein nor the powers, duties or immunities conferred by gifts in such manner upon custodians and persons dealing with custodians. The provisions of chapter 202, Laws of 1959 hereby amended as hereby amended henceforth apply, however, to all gifts made in a manner and form prescribed in chapter 202, Laws of 1959 hereby amended except insofar as such application impairs constitutionally vested rights. [1967 ex.s. c 88 § 7.]

**21.24.100 Short title.** This chapter may be cited as the "Washington uniform gifts to minors act". [1959 c 202 § 10.]

**21.24.900 Severability—1959 c 202.** If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [1959 c 202 § 11.]

**Chapter 21.25  
GIFTS OF REALTY TO MINORS ACT**

Sections	
21.25.010	Definitions.
21.25.020	Manner of making gift.
21.25.030	Effect of gift.
21.25.040	Duties and powers of custodian.
21.25.050	Custodian's expenses, compensation, bond and liability.
21.25.060	Exemption of third persons from liability.
21.25.070	Resignation, death or removal of custodian—Bond— Appointment of successor custodian.
21.25.080	Accounting by custodian.



- 21.25.090 Transfer of income proceeds or corpus into an account qualifying under chapter 21.24 RCW.  
 21.25.100 Construction—1967 ex.s. c 88.  
 21.25.110 Short title.  
 21.25.900 Severability—1967 ex.s. c 88.

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

(1) An "adult" is a person who has attained the age of eighteen years.

(2) A "bank" is a bank, trust company, savings and loan association, national banking association, or mutual savings bank.

(3) A "broker" is a person lawfully engaged in the business of effecting transactions in real property for the account of others who is licensed to do business under the laws of this state. The term includes a bank which effects or participates in effecting such transactions.

(4) "Court" means the superior courts of the state of Washington.

(5) "The custodial property" includes:

(a) All real property interests and all rents, royalties and income therefrom under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this chapter.

(b) The income from the custodial property; and

(c) The proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment or other disposition of such money and income.

(6) A "custodian" is a person so designated in a manner prescribed in this chapter.

(7) A "guardian" of a minor includes the general guardian, guardian or curator of his property, estate or person.

(8) An "issuer" is a person who places or authorizes the placing of his name on real property interests other than as a transfer agent, to evidence that it represents an interest in his property or to evidence his duty or undertaking to perform an obligation evidenced by the real property interest, or who becomes responsible for or in place of any such person.

(9) A "legal representative" of a person is his executor or the administrator, general guardian, guardian, conservator or curator of his property or estate.

(10) A "member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption.

(11) A "minor" is a person who has not attained the age of eighteen years.

(12) A "real property interest" includes any note, mortgage, contract to purchase or to sell real property, option to purchase or to sell real property, deed evidencing any title to or interest in real property, or, in general, any interest or instrument commonly recognized as evidencing or purporting to evidence an interest in real property, however minimal. The term does not include a "security" within the definition of RCW 21.24.010(14) as now or hereafter amended.

(13) A "transfer agent" is a person who acts as authenticating trustee, transfer agent or real estate broker or salesman as defined in RCW 18.85.010 as now or hereafter amended.

(14) A "trust company" is a bank authorized to exercise trust powers. [1971 ex.s. c 292 § 33; 1967 ex.s. c 88 § 8.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**21.25.020 Manner of making gift.** (1) An adult person may, during his lifetime, make a gift of a real property interest to a person who is a minor on the date of the gift if the subject of the gift is a real property interest which constitutes a recordable interest or charge in or against real property in the records of the county auditor, by registering it in the name of the donor, another adult person or a trust company, followed, in substance, by the words: "As custodian for (name of minor) under the 1967 Washington gifts of realty to minors act".

(2) Any gift made in a manner prescribed in subsection (1) of this section may be made to only one minor and only one person may be the custodian.

(3) A donor who makes a gift to a minor in the manner prescribed in subsection (1) of this section shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian.

(4) The donor may not under this chapter make gifts of custodial property when, added to gifts permitted under chapter 21.24 RCW as now or hereafter amended, such property (a) exceeds three thousand dollars in aggregate value to any one minor in any one year, or (b) exceeds thirty thousand dollars in aggregate value to any one minor. Value shall be computed on the basis of the actual value of each unit of property on the date the gift became effective. [1967 ex.s. c 88 § 9.]

**21.25.030 Effect of gift.** (1) A gift made in a manner prescribed in this chapter is irrevocable and conveys to the minor indefeasibly vested legal title to the real property interest given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this chapter.

(2) By making a gift in a manner prescribed in this chapter, the donor incorporates in his gift all the provisions of this chapter and grants to the custodian, and to any issuer, transfer agent, bank, broker or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this chapter. [1967 ex.s. c 88 § 10.]

**21.25.040 Duties and powers of custodian.** (1) The custodian shall collect, hold, manage, invest and reinvest the custodial property and all rents, royalties and income received therefrom for the best interest of the minor and according to the provisions of this chapter.

(2) The custodian may expend for the benefit of a minor such monthly amounts as may be reasonably necessary for the minor's actual living expenses including maintenance, schooling and medical or dental expense,

with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

(3) The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education.

(4) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of eighteen years, or, if the minor dies before attaining the age of eighteen years, he shall thereupon deliver or pay it over to the estate of the minor.

(5) The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, purchase or retain a real property interest given to the minor in a manner prescribed in this chapter.

(6) The custodian may grant, sell, convey, lease, demise, exchange, convert or otherwise dispose of custodial property as would a prudent man of discretion and intelligence. He may consent, directly or through a committee or other agent, to the sale, lease, pledge or mortgage of any property by or to any broker, agent, or trust company, and to any other action by any broker, agent, or trust company. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

(7) The custodian shall record each real property interest which is custodial property in the name of the custodian, followed, in substance, by the words: "As custodian for (name of minor) under the 1967 Washington gifts of realty to minors act". The custodian shall hold all money received in rents, royalties and other income from the custodial property in an account with a bank in the name of the custodian, followed, in substance, by the words: "As custodian for (name of minor) under the 1967 Washington gifts of realty to minors act". The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property; and shall further, except as provided in RCW 21.25.020, maintain all property and funds held pursuant to this chapter segregated from securities and money held under chapter 21.24 RCW.

(8) The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of fourteen years.

(9) A custodian has, with respect to the custodial property, in addition to the rights and powers provided in this chapter, all the rights and powers which a guardian has with respect to property not held as custodial property. [1971 ex.s. c 292 § 34; 1967 ex.s. c 88 § 11.]

**Severability**—1971 ex.s. c 292: See note following RCW 26.28.010.

**21.25.050 Custodian's expenses, compensation, bond and liability.** (1) A custodian is entitled to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties.

(2) A custodian may act without compensation for his services.

(3) Unless he is a donor, a custodian may receive from the custodial property reasonable compensation for his services determined by one of the following standards in the order stated:

(a) A direction by the donor when the gift is made;

(b) An order of the court.

(4) Except as otherwise provided in this chapter, a custodian shall not be required to give a bond for the performance of his duties.

(5) A custodian not compensated for his services is not liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in this chapter. [1967 ex.s. c 88 § 12.]

**21.25.060 Exemption of third persons from liability.** Although this section does not exempt from liability any third persons who would otherwise be liable for honoring a forged signature, no transfer agent, bank, broker or other person acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated by the purported donor or purporting to act as a custodian has been duly designated or whether any purchase, sale, incumbrance, or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by this chapter, or is obliged to inquire into the validity or propriety under this chapter of any instrument of instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him. [1967 ex.s. c 88 § 13.]

**21.25.070 Resignation, death or removal of custodian—Bond—Appointment of successor custodian.**

(1) Only an adult member of the minor's family, a guardian of the minor or a trust company is eligible to become a successor custodian. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed by this chapter.

(2) A custodian, other than the donor, may resign and designate his successor by:

(a) Executing an instrument of resignation designating the successor custodian; and

(b) Causing each real property interest which is custodial property to be registered and recorded in the name of the successor custodian followed, in substance,

by the words: "As custodian for (name of minor) under the 1967 Washington gifts of realty to minors act"; and

(c) Delivering to the successor custodian a duly acknowledged instrument of resignation, each real property interest recorded in the name of the successor custodian and all other custodial property, together with any additional instruments required for the transfer thereof.

(3) A custodian, whether or not a donor, may petition the court for permission to resign and for the designation of a successor custodian.

(4) If the person designated as custodian is not eligible, renounces or dies before the minor attains the age of eighteen years, the guardian of the estate of the minor shall be successor custodian. If the minor has no guardian of his estate, a donor, his legal representative, the legal representative of the custodian, an adult member of the minor's family, or the minor, if he has attained the age of fourteen years, may petition the court for the designation of a successor custodian.

(5) A donor, the legal representative of a donor, an adult member of the minor's family, a guardian of the minor or the minor, if he has attained the age of fourteen years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.

(6) Upon the filing of a petition as provided in this section, the court shall grant an order, directed to the persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor. [1971 ex.s. c 292 § 35; 1967 ex.s. c 88 § 14.]

**Severability**—1971 ex.s. c 292: See note following RCW 26.28.010.

**21.25.080 Accounting by custodian.** (1) The minor, if he has attained the age of fourteen years, or the legal representative of the minor, an adult member of the minor's family, or a donor or his legal representative may petition the court for an accounting by the custodian or his legal representative.

(2) The court, in a proceeding under this chapter or otherwise, may require or permit the custodian or his legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof. [1967 ex.s. c 88 § 15.]

**21.25.090 Transfer of income proceeds or corpus into an account qualifying under chapter 21.24 RCW.** A custodian may, at any time, transfer the proceeds of any rental, royalty or other income, or the corpus or any part thereof, held in money or in liquid form, under the provisions of this chapter, into an account qualifying under chapter 21.24 RCW, to the extent that such transfer constitutes a prudent transaction within the application and rules of chapter 21.24 RCW. [1967 ex.s. c 88 § 16.]

**21.25.100 Construction**—1967 ex.s. c 88. (1) This chapter shall not be construed as providing an exclusive method for making gifts to minors.

(2) This chapter shall not repeal, amend, or modify the provisions of chapter 21.24 RCW, but shall be held to be an additional, concurrent, or alternative method of providing for gifts to minors. [1967 ex.s. c 88 § 17.]

**21.25.110 Short title.** This chapter may be cited as the "1967 Washington gifts of realty to minors act". [1967 ex.s. c 88 § 18.]

**21.25.900 Severability**—1967 ex.s. c 88. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1967 ex.s. c 88 § 19.]

# TITLE 22

## WAREHOUSING AND DEPOSITS

### Chapters

- 22.09** Agricultural commodities.
- 22.16** Warehouses and elevators—Eminent domain.
- 22.28** Safe deposit companies.
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### Chapter 22.09

#### AGRICULTURAL COMMODITIES

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**22.09.010 Definitions.** For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly authorized representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, association, cooperative, port district, or two or more persons having a joint or common interest.

(4) "Agricultural commodities", hereinafter referred to as commodities, means, but is not limited to, all the grains, hay, peas, hops, grain and hay products, beans, lentils, corn, sorghums, malt, peanuts, flax, and other similar agricultural products, and shall also include agricultural seeds but only when stored by a warehouseman who issues negotiable warehouse receipts therefor.

(5) "Public warehouse" hereinafter referred to as "warehouse" means any elevator, mill, warehouse, public grain warehouse, public warehouse, terminal warehouse, station, or other structure or facility in which commodities are received from the public for storage, shipment, or handling, for compensation, and in the case of hay any yard or other enclosure within five miles thereof: *Provided*, That this shall not include any warehouse storing or handling fresh fruits and/or vegetables or any warehouse used exclusively for cold storage.

(6) "Terminal warehouse" means any warehouse designated as a terminal by the department, and located at an inspection point where inspection facilities are maintained by the department and where commodities are ordinarily received and shipped by common carrier.

(7) "Inspection point" means a city, town, or other place wherein the department maintains inspection and weighing facilities.

(8) "Station" means two or more warehouses between which commodities are commonly transferred in the ordinary course of business and which are (a) immediately adjacent to each other, or (b) located within the corporate limits of any city or town and subject to the same transportation tariff zone, or (c) at any railroad siding or switching area and subject to the same transportation tariff zone, or (d) at one location in the open country off rail, or (e) in any area which can be reasonably audited by the department as a station under the provisions of this chapter and which has been established as such by the director by rule or regulation adopted pursuant to chapter 34.04 RCW.

(9) "Depositor" means any person who deposits a commodity in a warehouse for storage, handling, or shipment, or who is the owner or legal holder of a warehouse receipt, outstanding scale weight ticket, or other evidence of such deposit or any person whose agricultural commodity has been sold to or is under control of the warehouseman for selling, processing, or handling for compensation, whether or not such commodity is in the warehouse.

(10) "Warehouse receipt" means a negotiable or non-negotiable warehouse receipt as provided for in the \*Uniform Warehouse Receipts Act (chapter 22.04 RCW), as enacted or hereafter amended.

(11) "Warehouseman" means any person owning, operating, or controlling a warehouse.

(12) "Scale weight ticket" means a load slip or other evidence of deposit, serially numbered, not including warehouse receipts as defined in subsection (10) of this section, given a depositor on request upon initial delivery of the commodity to the warehouse and shall show the warehouse name, and state number, type of commodity, weight thereof, name of depositor, and the date delivered. [1975 1st ex.s. c 7 § 19; 1971 c 65 § 1; 1967 c 240 § 51; 1963 c 124 § 1.]

\*Reviser's note: "Uniform Warehouse Receipts Act (chapter 22.04 RCW)" was repealed by 1965 ex.s. c 157, for later enactment see warehouse receipts, bills of lading and other documents of title—Uniform commercial code: Article 62A.7 RCW.

Severability—1967 c 240: See note following RCW 43.23.010.

**22.09.020 Administrative powers enumerated—**  
**Rules and regulations.** The department shall administer and carry out the provisions of this chapter and rules adopted hereunder, and it shall have the power and authority to:

(1) Supervise the receiving, shipping, handling, weighing, and storage of all commodities;

(2) Supervise the inspection and grading of all commodities;

(3) Approve or disapprove the facilities, including scales, of all warehouses;

(4) Approve or disapprove all rates and charges for the handling, storage, and shipment of all commodities;

(5) Investigate all complaints of fraud in the operation of any warehouse;

(6) Examine and inspect, during ordinary business hours, any warehouse licensed hereunder, including all commodities therein and all books, documents, and records;

(7) Inspect at reasonable times any warehouse or storage facility where commodities are stored, handled, shipped, or received including all commodities stored therein and all books, documents, and records in order to determine whether or not such facility should be licensed pursuant to this chapter;

(8) Administer oaths, issue subpoenas to compel the attendance of witnesses, and/or the production of books, documents, and records anywhere in the state pursuant to a hearing relative to the purpose and provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel, as provided in chapter 2.40 RCW, as enacted or hereafter amended;

(9) Adopt rules regarding the identification of commodities by the use of confetti or other similar means so that such commodities may be readily identified if stolen or removed in violation of the provisions of this chapter from a warehouse or if otherwise unlawfully transported;

(10) Adopt all the necessary rules and regulations for carrying out the purpose and provisions of this chapter. The adoption of rules and regulations under the provisions of this chapter shall be subject to the provisions of chapter 34.04 RCW (Administrative Procedure Act) as enacted or hereafter amended. The director when adopting rules in respect to the provisions of this chapter shall hold a public hearing and shall to the best of his ability

consult with persons and organizations or interests who will be affected thereby, and any final rule adopted as a result of the hearing shall be designed to promote the provisions of this chapter and shall be reasonable and necessary and based upon needs and conditions of the industry, and shall be for the purpose of promoting the well-being of the industry to be regulated and the general welfare of the people of the state. [1963 c 124 § 2.]

**22.09.030 License or licenses required.** It shall be unlawful for any person to operate a warehouse without first having obtained an annual license from the department: *Provided*, That this chapter shall not apply to warehouses that are federally licensed under the provisions of 7 USC 241 et seq. for the handling and storage of agricultural commodities. A separate license shall be required for each warehouse a person intends to operate: *Provided*, That any person operating two or more warehouses which constitute a station may license such warehouses under one state license. All the assets of a given station, licensed under one state license, shall be subject to all the liabilities of that station and for the purposes of this chapter shall be treated as a single warehouse, requiring all the stocks and obligations of the warehouses at a given station to be treated as a unit for all purposes including, but not limited to, issuance of warehouse receipts and receipt and delivery of commodities for storage, shipment, or handling. [1975 1st ex.s. c 7 § 20; 1963 c 124 § 3.]

**22.09.040 Application for license.** Application for a license to operate a warehouse under the provisions of this chapter shall be on a form prescribed by the department and shall include:

(1) The full name of the person applying for the license and whether the applicant is an individual, partnership, association, corporation or other;

(2) The full name of each member of the firm or partnership, or the names of the officers of the company, society, cooperative association, or corporation;

(3) The principal business address of the applicant in the state and elsewhere;

(4) The name or names of the person or persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant;

(5) The location of each warehouse the applicant intends to operate and the preponderate commodity expected in storage;

(6) The bushel storage capacity of each such warehouse to be licensed, including a schematic diagram accurately showing the areas of storage and floor plan of the warehouse;

(7) The schedule of fees to be charged at each warehouse for the handling, storage, and shipment of all commodities during the licensing period;

(8) A financial statement to determine the net worth of the applicant to determine whether or not the applicant meets the minimum net worth requirements established by the director pursuant to chapter 34.04 RCW;

(9) Whether the application is for a station, terminal, or public warehouse license;

(10) Any other reasonable information the department finds necessary to carry out the purpose and provisions of this chapter. [1975 1st ex.s. c 7 § 21; 1963 c 124 § 4.]

**22.09.050 License fees, penalties.** Any application for a license to operate a warehouse shall be accompanied by a license fee of one hundred dollars for a terminal warehouse and twenty-five dollars for a public warehouse. If a licensee operates more than one warehouse, under one state license as provided for in RCW 22.09.030, the license fee shall be computed by multiplying the number of physically separated warehouses within such station by the applicable terminal or public warehouse license fee. If an application for renewal of a license or licenses is not received by the department prior to June 30th of any year, a penalty of fifty dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued. This penalty shall not apply if the applicant furnishes an affidavit certifying that he has not acted as a warehouseman subsequent to the expiration of his prior license. [1963 c 124 § 5.]

**22.09.060 Bond and insurance prerequisite to license.** No license shall be issued to an applicant before a bond as provided in RCW 22.09.090 and a certificate of insurance as provided in RCW 22.09.110 have been filed with the department. [1975 1st ex.s. c 7 § 22; 1963 c 124 § 6.]

**22.09.070 Licenses—Issuance—Posting—Duration.** The department shall issue a license to an applicant upon its determination that the applicant has facilities adequate for handling and storage and that the application is in the proper form and upon approval of the matters contained therein and upon a showing that such applicant has complied with the provisions of this chapter and rules adopted hereunder. The licensee shall forthwith upon receipt of such license post it in a conspicuous place in the office of the licensed warehouse or if a station license, in the main office at such station. Such license shall expire on June 30th, subsequent to the date of issuance unless it has been revoked, canceled, or suspended prior thereto by the department. [1963 c 124 § 7.]

**22.09.080 Licenses—Denial—Suspension—Revocation.** The department is authorized to deny, suspend, or revoke a license after a hearing in any case in which it is determined that there has been a violation or refusal to comply with the requirements of this chapter, rules adopted hereunder, or the provisions of the \*Uniform Warehouse Receipts Act (chapter 22.04 RCW) as enacted or hereafter amended. All hearings for the denial, suspension, or revocation of a license shall be subject to chapter 34.04 RCW (Administrative Procedure Act) as enacted or hereafter amended. [1963 c 124 § 8.]

\*Reviser's note: "Uniform Warehouse Receipts Act (chapter 22.04 RCW)" was repealed by 1965 ex.s. c 157, for later enactment see warehouse receipts, bills of lading and other documents of title—Uniform commercial code: Article 62A.7 RCW.

**22.09.090 Bond requisites—Insurance policy in lieu of bond.** (1) Before any person shall be granted a license pursuant to the provisions of this chapter such person shall give a bond to the state of Washington executed by the warehouseman as principal and by a corporate surety licensed to do business in this state as surety. The bond shall be in the sum of not less than twenty-five thousand dollars nor more than five hundred thousand dollars. The department shall, after holding a public hearing, determine the amount of the bond which shall be computed at a rate of not less than fifteen cents nor more than thirty cents per bushel multiplied by the number of bushels of licensed commodity storage capacity of the warehouses of the licensee furnishing the bond, or at the rate of not less than six percent nor more than twelve percent of the gross sales of agricultural commodities of such licensee, whichever is greater.

(2) The bond shall be approved by the department and shall be conditioned upon the faithful performance by the warehouseman of the duty to keep in the warehouse for the depositor the commodity delivered, and to deliver the commodity to, or ship it for, such depositor, and such additional obligations, including merchandising, as a warehouseman may assume with the respective depositors as defined in RCW 22.09.010(9) as now or hereafter amended. In case a person has applied for licenses to conduct two or more warehouses in the state, the assets applicable to all warehouses, but not the deposits except in case of a station, shall be subject to the liabilities of each. The total and aggregate liability of the surety for all claims upon such bond shall be limited to the amount specified in the bond.

(3) The warehouseman may give a single bond meeting the requirements of this chapter, and all warehouses operated by the warehouseman shall be deemed as one warehouse for the purpose of the bond required under such section. Any change in the capacity of a warehouse or installation of any new warehouse involving a change in bond liability under this chapter shall be immediately reported to the department prior to the operation thereof.

(4) Notwithstanding any other provisions of this chapter, the license of a warehouseman shall automatically be suspended in accordance with the provisions of RCW 22.09.100 for failure at any time to have or to maintain a bond in the amount and type required herein. The department shall remove the suspension or issue a license as the case may be, when the required bond has been obtained.

(5) Any warehouseman required to submit a bond to the department pursuant to the provisions of this chapter shall have the option to file a policy of insurance with the department in lieu of the warehouseman's bond. Such insurance policy, before being accepted, shall be approved by the attorney general and the insurance commissioner of the state of Washington if they deem the coverage provided thereby is equivalent to or greater than the coverage for depositors provided by the warehouseman's bond. If such an insurance policy is accepted in place of the bond, such insurance policy, as between the department, warehouseman, and the depositors, shall be treated exactly the same as if it were a bond filed

with the department. It is the intention of the legislature in this subsection to have the insurance policy replace the bond, as between the department, warehouseman, and the depositors, for all purposes as though the term bond used throughout the several sections of this chapter were to contain instead the term insurance policy. [1975 1st ex.s. c 7 § 23; 1969 ex.s. c 132 § 2; 1963 c 124 § 9.]

**22.09.100 Bonds—Duration—Release of surety.** Every bond filed with and approved by the department shall without the necessity of periodic renewal remain in force and effect until such time as the warehouseman's license is revoked for cause or otherwise canceled. The surety on a bond, as provided herein, shall be released and discharged from all liability to the state accruing on such bond after the expiration of ninety days from the date upon which such surety shall have lodged with the department a written request to be released and discharged; but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the ninety-day period. The surety shall simultaneously send such notification of cancellation in writing to any other governmental agency requesting it. The department shall promptly upon receiving any such request notify the principal who furnished the bond and unless the principal shall, on or before the expiration of the ninety-day period, file a new bond, the department shall forthwith cancel the principal's license. [1963 c 124 § 10.]

**22.09.110 Casualty insurance required—Certificate to be filed.** All commodities in storage in a warehouse shall be kept fully insured for the current market value of such commodity for the license period against loss by fire, lightning, internal explosion, windstorm, cyclone, and tornado. Evidence of such insurance coverage in the form of a certificate of insurance approved by the department shall be filed by the warehouseman with the department at the time of making application for an annual license to operate a warehouse as required by this chapter. The department shall issue a license when such certificate of insurance is received. [1963 c 124 § 11.]

**22.09.120 Insurance—Cancellation procedure—Suspension of license.** (1) Upon the existence of an effective policy of insurance as required in RCW 22.09.110, the insurance company involved shall be required to give thirty days' advance notice to the department by registered mail or certified mail return receipt requested of any cancellation of the policy. In the event of any cancellation, the department, without hearing, shall immediately suspend the license of such person, and the suspension shall not be removed until satisfactory evidence of the existence of an effective policy of insurance, conditioned as above set out, has been submitted to the department. [1963 c 124 § 12.]

**22.09.130 Rights and duties of licensees—Duty to serve—Receipts—Special binning—Unsuitable commodities.** (1) Every warehouseman shall receive for storage, handling, or shipment, so far as the capacity



and facilities of his warehouse will permit, all commodities included in the provisions of this chapter, in suitable condition for storage, tendered him in the usual course of business and shall issue therefor a warehouse receipt or receipts in form prescribed by the department as herein provided or a scale weight ticket. The deposit for storage, shipment or handling of such commodity must be credited to the depositor in the books of the warehouseman within seven days from the date of such deposit. If the commodity has been graded a warehouse receipt shall be issued within ten days after demand by the owner.

(2) If requested by the depositor, each lot of his commodity shall be kept in a special pile or special bin, if available, but in the case of a bulk commodity, if the lot or any portion of it does not equal the capacity of any available bin, the depositor may exercise his option to require the commodity to be specially binned only on agreement to pay charges based on the capacity of the available bin most nearly approximating the required capacity.

(3) A warehouseman shall have the right to refuse to accept for storage commodities which are wet, damaged, insect-infested, or in other ways unsuitable for storage. [1963 c 124 § 13.]

**22.09.140 Rights and duties of licensees—Partial withdrawal—Adjustment or substitution of receipt—Liability to third parties.** (1) When partial withdrawal of his commodity is made by a depositor, the warehouseman shall make appropriate notation thereof on the depositor's nonnegotiable receipt or on other records, or, if the warehouseman has issued a negotiable receipt to the depositor, he shall claim, cancel, and replace it with a negotiable receipt showing the amount of such depositor's commodity remaining in the warehouse, and for his failure to claim and cancel, upon delivery to the owner of a commodity stored in his warehouse, a negotiable receipt issued by him, the negotiation of which would transfer the right to possession of such commodity, a warehouseman shall be liable to anyone who purchases such receipt for value and in good faith, for failure to deliver to him all the commodity specified in the receipt, whether such purchaser acquired title to the negotiable receipt before or after delivery of any part of the commodity by the warehouseman. [1963 c 124 § 14.]

**22.09.150 Rights and duties of licensees—Delivery of stored commodities—Damages.** (1) The duty of the warehouseman to deliver the commodity stored shall be governed by the provisions of this chapter and the requirements of the \*Uniform Warehouse Receipts Act (chapter 22.04 RCW) as enacted or hereafter amended. Upon the return of the receipt to the proper warehouseman, properly endorsed, and upon payment or tender of all advances and legal charges, commodities of the grade and quantity named therein shall be delivered to the holder of such receipt, except as provided by the \*Uniform Warehouse Receipts Act (chapter 22.04 RCW) as enacted or hereafter amended.

(2) A warehouseman's duty to deliver any commodity is fulfilled if delivery is made pursuant to the contract

with the depositor or if no contract exists, then to the several owners in the order of demand as rapidly as it can be done by ordinary diligence; where delivery is made within forty-eight hours excluding Saturdays, Sundays, and legal holidays after facilities for receiving the commodity are provided, such delivery is deemed to comply with this subsection.

(3) No warehouseman shall fail to deliver a commodity as provided in this section, and delivery shall be made at the warehouse or station where the commodity was received unless agreed otherwise.

(4) In addition to being subject to penalties provided in this chapter for a violation of this section, if a warehouseman unreasonably fails to deliver commodities within the time as provided in this section, the person entitled to delivery of the commodity may maintain an action against the warehouseman for any damages resulting from the warehouseman's unreasonable failure to so deliver. In any such action the person entitled to delivery of the commodity has the option to seek recovery of his actual damages or liquidated damages of one-half of one percent of the value for each day's delay after such forty-eight hour period. [1963 c 124 § 15.]

\*Reviser's note: "Uniform Warehouse Receipts Act (chapter 22.04 RCW)" was repealed by 1965 ex.s. c 157, for later enactment see warehouse receipts, bills of lading and other documents of title—Uniform commercial code: Article 62A.7 RCW.

**22.09.160 Rights and duties of licensees—Disposition of hazardous commodities.** (1) If a warehouseman discovers that as a result of a quality or condition of a certain commodity placed in his warehouse, including identity preserved commodities as provided for in RCW 22.09.130(2), of which he had no notice at the time of deposit, such commodity is a hazard to other commodities or to persons or to the warehouse he may notify the depositor that it will be removed. If the depositor does not accept delivery of such commodity upon removal the warehouseman may sell the commodity at public or private sale without advertisement but with reasonable notification of the sale to all persons known to claim an interest in the commodity. If the warehouseman after a reasonable effort is unable to sell the commodity, he may dispose of it in any other lawful manner and shall incur no liability by reason of such disposition.

(2) At any time prior to sale or disposition as authorized in this section, the warehouseman shall deliver the commodity to any person entitled to it, upon proper demand and payment of charges.

(3) From the proceeds of sale or other disposition of the commodity the warehouseman may satisfy his charges for which otherwise he would have a lien, and shall hold the balance thereof for delivery on the demand of any person to whom he would have been required to deliver the commodity. [1963 c 124 § 16.]

**22.09.170 Rights and duties of licensees—Special disposition of commodities pursuant to written order.** (1) If written instruction or order is given or furnished by the owner of the commodity, or his authorized agent, directed to a licensed warehouseman, and if such order is properly made a part of the warehouseman's records

and available for departmental inspection, then the warehouseman:

(a) May accept such deposit of a commodity for the purpose of sale to the warehouseman;

(b) May receive such commodity for the purpose of processing or cleaning;

(c) May receive such commodity for the purpose of shipping by the warehouseman for the account of the depositor;

(d) May accept seed and handle the same pursuant to the terms of a contract with the depositor and the contract shall be considered written instructions pursuant to subsection (1) of this section.

(2) Commodities deposited with the warehouseman without written order, as provided for in subsection (1) of this section, must be handled and considered to be a commodity in storage. [1963 c 124 § 17.]

**22.09.180 Rights and duties of licensees—Records, contents—Receipt not defeated by licensees' ownership of goods.** (1) The warehouseman shall maintain current and complete records at all times with respect to all agricultural commodities handled, stored, shipped, or merchandised by him, including commodities owned by him. Such records shall include, but not be limited to, a daily position record showing the total quantity of each kind and class of agricultural commodity received and loaded out and the amount remaining in storage at the close of each business day, and the warehouseman's total storage obligation for each kind and class of agricultural commodity at the close of each business day.

(2) No warehouse receipt issued by any warehouseman as defined in this chapter and no negotiation, transfer, or pledge of any such receipt shall be defeated by reason of the fact that the goods covered by the receipt were owned, in whole or in part, by the warehouseman at the time the receipt was issued.

(3) Every warehouseman purchasing any agricultural commodity from a depositor thereof shall promptly make and keep for one year a correct record showing in detail the following:

(a) The name and address of the depositor;

(b) The date purchased;

(c) The terms of the sale; and

(d) The quality and quantity purchased by the warehouseman, and where applicable the dockage, tare, grade, size, net weight, or quantity.

(4) An itemized statement of any charges paid by the warehouseman for the account of the depositor.

A copy of such record containing the above matters shall be forwarded to the depositor forthwith. [1975 1st ex.s. c 7 § 24; 1963 c 124 § 18.]

**22.09.190 Rights and duties of licensees—Rebates, preferences, etc., prohibited.** No warehouseman subject to the provisions of this chapter shall:

(1) Directly or indirectly, by any special charge, rebate, drawback, or other device, demand, collect, or receive from any person a greater or lesser compensation for any service rendered or to be rendered in the handling, storage, or shipment of any commodity than he demands, collects, or receives from any other person for

doing for him a like and contemporaneous service in the handling, storage, or shipment of any commodity under substantially similar circumstances or conditions;

(2) Make or give any undue or unreasonable preference or advantage to any person in any respect whatsoever;

(3) Subject any particular person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [1963 c 124 § 19.]

**22.09.200 Rights and duties of licensees—Reports to department.** Each warehouseman shall report information to the department at such times and as may be reasonably required by the department for the necessary enforcement and supervision of a sound, reasonable, and efficient warehouse inspection program for the protection of depositors of commodities and for persons, or agencies, who deal in such commodities. [1963 c 124 § 20.]

**22.09.210 Rights and duties of licensees—Receipt, delivery, of commodities—Departmental inspection required.** It shall be unlawful for any warehouseman to receive in any terminal warehouse any grain that has not been weighed, inspected, and/or graded by an employee of the department under the supervision of a duly authorized inspector of the department, or to deliver out of any terminal warehouse any grain that has not been weighed, inspected, and/or graded in such manner. [1963 c 124 § 21.]

**22.09.220 Rights and duties of licensees—Premises, construction and maintenance.** A warehouse or station shall be constructed and maintained in a manner adequate to carry out the provisions of this chapter. [1963 c 124 § 22.]

**22.09.230 Rights and duties of licensees—Signs—Use of "Washington Bonded Warehouse".** Every licensee shall post at or near the main entrance to each of his warehouses a sign as prescribed by the department which shall include the words "Washington Bonded Warehouse". It shall be unlawful to display such sign or any sign of similar appearance or bearing the same words, or words of similar import, when such warehouse is not licensed and bonded under this chapter. [1963 c 124 § 23.]

**22.09.240 Rights and duties of licensees—Schedule of rates—Posting—Revision.** Every warehouseman shall annually, during the first week in July, publish by posting in a conspicuous place in each of his warehouses the schedule of storage and handling rates filed with the department for the ensuing license year. The schedule shall be kept posted and the rates shall not be changed during such year except upon approval of the department. [1963 c 124 § 24.]

**22.09.250 Rights and duties of licensees—Unlawful practices.** It shall be unlawful for a warehouseman to:

(1) Issue a warehouse receipt for any commodity which he does not have in his warehouse at the time such receipt is issued;

(2) Issue warehouse receipts in excess of the amount of the commodities held in the licensee's warehouse to cover such receipt;

(3) Remove, deliver, direct, assist, or permit any person to remove, or deliver any commodity from any warehouse for which warehouse receipts have been issued and are outstanding without receiving and canceling the warehouse receipt issued therefor;

(4) Sell, encumber, ship, transfer, or in any manner remove or permit to be shipped, transferred, or removed from a warehouse any commodity received by him for deposit, shipment, or handling, for which scale weight tickets have been issued without the written approval of the holder of the scale weight ticket and such transfer shall be shown on the individual depositor's account and the inventory records of the warehouseman;

(5) Remove, deliver, direct, assist, or permit any person to deliver, or remove any commodities from any warehouse, whereby the amount of any fairly representative grade or class of any commodity in the warehouses of such licensee is reduced below the amount for which warehouse receipts for the particular commodity are outstanding;

(6) Issue a warehouse receipt showing a grade or description different from the grade or description of the commodity delivered and for which such warehouse receipt is issued;

(7) Issue a warehouse receipt or scale weight ticket which exceeds in amount from the actual quantity of commodities delivered for storage;

(8) Fail to deliver commodities pursuant to RCW 22.09.150 upon demand of the depositor;

(9) Knowingly accept for storage any commodity destined for human consumption which has been contaminated with an agricultural pesticide or filth rendering it unfit for human consumption, if such commodities are commingled with any uncontaminated commodity;

(10) Terminate storage of a commodity in his warehouse without giving reasonable notice to the depositor. [1963 c 124 § 25.]

**22.09.260 Deposit of commodities unfit for human consumption—Notice.** No depositor shall knowingly deliver for storage, shipment, or handling any commodity treated with an agricultural pesticide or contaminated with filth rendering it unfit for human consumption without first notifying the warehouseman. [1963 c 124 § 26.]

**22.09.270 Police protection of terminal yards and tracks.** All railroad companies and warehousemen operating in the cities provided for inspection by this chapter shall furnish ample and sufficient police protection to all their several terminal yards and terminal tracks to securely protect all cars containing commodities while the same are in their possession. They shall prohibit and restrain all unauthorized persons, whether under the guise of sweepers, or under any other pretext whatever, from entering or loitering in or about their railroad

yards or tracks and from entering any car of commodities under their control, or removing commodities therefrom, and shall employ and detail such number of watchmen as may be necessary for the purpose of carrying out the provisions of this section. [1963 c 124 § 27.]

**22.09.280 Railroads to provide side tracks and track scales—Weighing of cars.** Any railroad delivering commodities covered by this chapter in cars at designated inspection points shall provide convenient and suitable side tracks at such places as the department may approve. All cars billed for inspection shall be placed on such side tracks and the department shall be notified by the railroad in accordance with department regulations. Such railroad company shall provide suitable track scales for weighing cars of commodities upon the request of interested persons. Upon request, the department may weigh, or supervise the weighing of all cars of commodities received over the line of such railroad. Such weighing shall be conditioned upon the weighing of such cars after unloading to determine the actual weight of commodities delivered. [1963 c 124 § 28.]

**22.09.290 Warehouse receipts—Required terms.** (1) Every warehouse receipt issued for commodities covered by this chapter shall embody within its written or printed terms:

(a) The grade of the commodities received as established by the official standards of this state, unless the identity of the commodity is in fact preserved in a special pile or special bin, and an identifying mark of such pile or bin shall appear on the face of the receipt and on the pile or bin. Such commodity in such special pile or bin shall not be removed or relocated without canceling the outstanding receipt and issuing a new receipt showing such change;

(b) Such other terms and conditions as required by the \*Uniform Warehouse Receipts Act (chapter 22.04 RCW) as enacted or hereafter amended: *Provided*, That nothing contained therein shall require a receipt issued for wheat to specifically state the variety of wheat by name;

(c) A clause reserving for the warehouseman the optional right to terminate storage and collect outstanding charges against any lot of commodities after June 30th following the date of the receipt.

(2) Warehouse receipts issued under the United States Warehouse Act (7 USCA § 241 et seq.) shall be deemed to fulfill the requirements of this chapter so far as it pertains to the issuance of warehouse receipts. [1963 c 124 § 29.]

\*Reviser's note: "Uniform Warehouse Receipts Act (chapter 22.04 RCW)" was repealed by 1965 ex.s. c 157, for later enactment see warehouse receipts, bills of lading and other documents of title—Uniform commercial code: Article 62A.7 RCW.

**22.09.300 Warehouse receipts—Forms, numbering, printing, bond—Compliance with Uniform Warehouse Receipts Act—Confiscation.** (1) All warehouse receipts issued under this chapter shall be upon forms prescribed by the department and supplied only to

licensed warehousemen at cost of printing, packing, and shipping, as determined by the department. They shall contain the state number of such license and shall be numbered serially for each state number and the original negotiable receipts shall bear the state seal. Requests for such receipts shall be on forms furnished by the department and shall be accompanied by payment to cover cost: *Provided*, That the department by order may allow a warehouseman to have his individual warehouse receipts printed, after the form of the receipt is approved as in compliance with this chapter, and the warehouseman's printer shall supply an affidavit stating the amount of receipts printed, numbers thereof: *Provided further*, That the warehouseman must supply a bond in an amount fixed by the department and not to exceed five thousand dollars to cover any loss resulting from the unlawful use of any such receipts.

(2) All warehouse receipts shall comply with the provisions of the \*Uniform Warehouse Receipts Act (chapter 22.04 RCW) as enacted or hereafter amended, except as to the variety of wheat as set forth in RCW 22.09.290(1)(b) herein, and with the provisions of this chapter where not inconsistent or in conflict with the Uniform Warehouse Receipts Act. All receipts remaining unused shall be confiscated by the department if the license required herein is not promptly renewed or is suspended, revoked, or canceled. [1963 c 124 § 30.]

\*Reviser's note: "Uniform Warehouse Receipts Act (chapter 22.04 RCW)" was repealed by 1965 ex.s. c 157, for later enactment see warehouse receipts, bills of lading and other documents of title—Uniform commercial code: Article 62A.7 RCW.

**22.09.310 Warehouse receipts—Dealing in unauthorized receipts prohibited—Penalty.** Any person, or any agent or servant of such person, or any officer of a corporation who prints, binds, or delivers warehouse receipt forms, except on an order or requisition signed by the director, or who uses such forms knowing that they were not so printed, bound, or delivered shall be guilty of a misdemeanor. [1963 c 124 § 31.]

**22.09.320 Warehouse receipts—Lost or destroyed receipts.** In case any warehouse receipt issued by a licensee shall be lost or destroyed, the owner thereof shall be entitled to a duplicate receipt from the licensee upon executing and delivering to the warehouseman issuing such receipt, a bond in double the value of the commodity covered by such lost receipt, with good and sufficient surety to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and such duplicate receipt shall state that it is issued in lieu of the former receipt, giving the number and date thereof. [1963 c 124 § 32.]

**22.09.330 Scale weight tickets not precluded.** Nothing in this chapter shall be construed to prevent the issuance of scale weight tickets as defined in RCW 22.09.010(12) showing when and what quantities of commodities were received and the condition thereof upon delivery. [1963 c 124 § 33.]

**22.09.340 Examination of receipts and commodities—Request—Fee—Access to bins—Records**

**and accounts.** (1) Upon the request of any person or persons having an interest in a commodity stored in any public warehouse and upon payment of twenty-five dollars in advance by such person or persons, the department may cause such warehouse to be inspected and shall check the outstanding negotiable and nonnegotiable warehouse receipts, and scale weight tickets which have not been superseded by negotiable or nonnegotiable warehouse receipts, with the commodities on hand and shall report the amount of receipts and scale weight tickets outstanding and the amount of storage, if any. If the cost of the examination is more than twenty-five dollars, the person or persons having an interest in the commodity stored in any such warehouse, and requesting such examination, shall pay the additional cost to the department, unless a shortage is found to exist.

(2) A warehouse shall be maintained in a manner which will provide a reasonable means of ingress and egress to the various storage bins and compartments by those persons authorized to make inspections and an adequate facility to complete such inspections shall be provided.

(3) The property, books, records, accounts, papers, and proceedings of every such warehouseman shall at all reasonable times be subject to such inspection by the department. The warehouseman shall maintain adequate records and systems for the filing and accounting of warehouse receipts, canceled warehouse receipts, scale weight tickets, other documents, and transactions necessary or common to the warehouse industry. Canceled warehouse receipts, copies of scale weight tickets, and other copies of documents evidencing ownership or ownership liability shall be retained by the warehouseman for a period of at least three years from the date of deposit. [1963 c 124 § 34.]

**22.09.350 Remedies of department on discovery of shortage or refusal to submit to inspection.** (1) Whenever it appears that there is evidence after any investigation that a warehouseman has not in his possession sufficient commodities to cover the outstanding warehouse receipts, scale weight tickets, or other evidence of storage liability issued or assumed by him, or when such warehouseman refuses to submit his books, papers, or property to lawful inspection, the department may give notice to the warehouseman to comply with all or any of the following requirements:

- (a) Cover such shortage;
- (b) Give additional bond as requested by the department;
- (c) Submit to such inspection as the department may deem necessary.

(2) If such warehouseman fails to comply with the terms of such notice within twenty-four hours from the date of its issuance, or within such further time as the department may allow, the department may petition the superior court of the county where the licensee's principal place of business is located (as shown by the license application) for an order:

- (a) Authorizing the department to seize and take possession of all or a portion of special piles and special bins

of commodities and all or a portion of commingled commodities in the warehouse or warehouses owned, operated, or controlled by the warehouseman, and of all books, papers, and property of all kinds used in connection with the conduct or the operation of such warehouseman's warehouse business, and the books, papers, records and property which pertain specifically, exclusively and directly to that business; and

(b) Enjoining the warehouseman from interfering with the department in the discharge of its duties as required by this section.

(3) Upon taking possession the department shall give written notice of its action to the surety on the bond of the warehouseman and may notify the holders of record, as shown by the warehouseman's records, of all warehouse receipts or scale weight tickets issued for commodities, to present their warehouse receipt or other evidence of deposits for inspection, or to account for the same. The department may thereupon cause an audit to be made of the affairs of such warehouse, especially with respect to the commodities in which there is an apparent shortage, to determine the amount of such shortage and compute the shortage as to each depositor as shown by the warehouseman's records, if practicable. The department shall notify the warehouseman and the surety on his bond of the approximate amount of such shortage and notify each depositor thereby affected by sending notice to the depositor's last known address as shown by the records of the warehouseman.

(4) The department shall retain possession of the commodities in the warehouse or warehouses, and of the books, papers, and property of the warehouseman, until such time as the warehouseman or the surety on the bond shall have satisfied the claims of all holders of warehouse receipts or other evidence of deposits, or, in case the shortage exceeds the amount of the bond, the surety on the bond shall have satisfied such claims pro rata, or until such time as the department is ordered by the court to surrender possession.

(5) If during or after the audit provided for in this section, or at any other time the department has evidence that the warehouseman is insolvent or is unable to satisfy the claims of all holders of warehouse receipts or other evidence of deposits, the department may petition the superior court which authorized the department to take possession, for the appointment of a receiver to operate or liquidate the business of the warehouseman in accordance with law.

(6) At any time within ten days after the department takes possession of any commodities, or the books, papers, and property of any warehouse, the warehouseman may serve notice upon the department to appear in the superior court of the county in which such warehouse is located, at a time to be fixed by such court, which shall not be less than five, nor more than fifteen days from the date of the service of such notice, and show cause why such commodities, books, papers, and property should not be restored to his possession.

(7) All necessary expenses incurred by the department in carrying out the provisions of this section may be recovered in a separate civil action brought by the department in the said superior court or recovered at the

same time and as a part of the receivership or seizure action filed under this chapter.

(8) As a part of the expenses so incurred, the department or the receiver is authorized to include the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out the provisions of this section. [1963 c 124 § 35.]

**22.09.360 Powers and duties of receivers.** If a receiver is appointed, the surety on the bond of the warehouseman shall be joined as a party defendant by the receiver. If required by the court, the surety shall pay the bond proceeds, or so much thereof as the court may find necessary, into court and thereby shall become absolutely discharged and relieved of any further liability to the extent of such payment. In addition to other authority provided by law, the receiver shall have authority to give notice and provide a reasonable time, as approved by the court, to persons holding warehouse receipts or other evidence of deposit issued by the defaulting warehouseman, to file their claims with the receiver. The receiver shall investigate each claim, determine the pro rata share of commodities less set-offs, or the proceeds from the sale of such commodities, due each claimant. The receiver shall also determine the amount, if any, due each claimant by the surety. The court, after hearing, may adopt or amend the findings of the receiver and shall by order, make distribution of commodities or the proceeds from the sale of commodities. The court by order may also require the surety to make payment to claimants. Such orders, unless appealed as otherwise authorized by law, are to be a final settlement of such matters between the parties concerned. The receiver is authorized, with the approval of the court, to continue the operation of all or any part of the entire business of the warehouseman and to take any other course of action or procedure which will best serve the interest of the depositors or those who need and use the services offered by the licensee and the warehouse. [1963 c 124 § 36.]

**22.09.370 Action by depositor upon licensees' bond.** (1) If no action is commenced pursuant to RCW 22.09-.360 within thirty days after written demand to the department, any depositor injured by the failure of a licensee to comply with the condition of his bond shall have a right of action upon such licensee's bond for the recovery of all damages suffered thereby.

(2) Recovery under such bond shall be prorated when the claims exceed the liability under such bond.

(3) Whenever the claimed shortage exceeds the amount of such bond, it shall not be necessary for any depositors suing on such bond to join other depositors in such suit and the burden of establishing proration shall be on the surety as a matter of defense. [1963 c 124 § 37.]

**22.09.380 Designation of inspection points and terminal warehouses.** The department may designate a warehouse located at an inspection point as a terminal warehouse. The cities of Spokane, Pasco, Seattle, Tacoma, Longview, Kalama, and Vancouver shall be

considered inspection points and shall be provided with state inspection and weighing commencing July 1, 1963: *Provided*, That where the department after hearing determines that such cities are no longer necessary as inspection points it may by regulation change such designated inspection points by removing one or more or by designating other locations as inspection points where commodities are received and shipped by common carrier and which reasonably justify and render necessary the inspection and weighing thereof: *Provided further*, That the revenue from inspection and weighing at such inspection points shall equal the cost of providing such services. [1963 c 124 § 38.]

**22.09.390 Inspection and grading of commodities—Federal grades and standards—Regulations.** The grades and standards established by the United States department of agriculture as of July 1, 1963, for all commodities included within the provisions of this chapter are hereby adopted as the grades and standards for such commodities in this state: *Provided*, That the department is hereby authorized to adopt by regulation any new or future amendments to such federal grades and standards. The department is also authorized to issue regulations whether or not in accordance with the federal government and to prescribe therein grades and standards which it may deem suitable for such commodities, except hops, in the state of Washington. In adopting any new or amendatory regulations the department shall give appropriate consideration, among other relevant factors, to the following:

- (1) The usefulness of uniform federal and state grades;
- (2) The common classifications given such commodities within the industry;
- (3) The utility of various grades;
- (4) The kind and type of grades requested by those dealing with the particular type of commodity; and
- (5) The condition of the commodity with regard to its wholesomeness and purity. [1963 c 124 § 39.]

**22.09.400 Inspection and grading of commodities—Method of inspection and grading.** Inspection and grading of a lot or parcel of a commodity tendered for inspection and grading under this chapter shall consist of taking and examining a representative sample thereof and making such tests as are necessary to determine its grade. Commodities tendered for inspection must be offered and made accessible for sampling at inspection points during customary business hours.

(1) No inspector shall issue a certificate of grade for any commodity unless the inspection and grading thereof be based upon a correct and representative sample of the commodity and the inspection is made under conditions which permit the determination of its true grade, except as provided in subsections (2) and (3) of this section. No sample shall be deemed to be representative unless it is of the size and procured in accordance with the uniform methods prescribed by the department.

(2) An inspection may be made of a submitted sample or package of a commodity, provided that the certificate issued in such case clearly shows that the inspection and

grading covers only the submitted sample or package of such commodity and not the lot from which it was purportedly drawn.

(3) When commodities are tendered for inspection in such a manner as to make the drawing of a representative sample impossible, a qualified inspection may be made. In such case the certificate shall clearly show the condition preventing proper sampling such as heavily loaded box car, truck, barge, or other container, or other condition. [1963 c 124 § 40.]

**22.09.410 Inspection and grading of commodities—State samples.** From all commodities inspected, samples may be drawn, which samples shall become the property of the state and subject to disposition by the department. Upon prior request the department may transmit a portion of such samples to interested persons upon payment of a reasonable fee therefor set by regulation. Official state samples shall be retained for a period of fifteen days. [1963 c 124 § 41.]

**22.09.420 Inspection and grading of commodities—Powers and duties of inspectors at terminal warehouses.** The department's inspectors shall, at terminal warehouses, have exclusive control of the weighing, inspecting, and grading of the commodities which are included within the provisions of this chapter and the action and certificates of such inspectors in the discharge of their duties, as to all commodities weighed or inspected by them, shall be accepted as prima facie evidence of the correctness of the above activity: *Provided*, That an appeal may be taken as provided in RCW 22.09.450, to the director of the department. Suitable books and records shall be kept in which shall be entered a record of every carload, or cargo, or part of cargo of commodities inspected or weighed by them, showing the number and initial or other designation of the vehicle or boat containing such carload, or cargo, or part of cargo, its weight, the kind of commodity, and its grade, the reason for such grade, if of inferior grade, the amount of such dockage, the amount of fees and forfeitures and disposition of same; and for each vehicle or cargo, or part of cargo, of commodity inspected, they shall give a certificate of inspection showing the kind and grade of the same and the reason for all grades established. They shall also keep a record of all appeals, decisions, and a complete record of every official act, which books and records shall be open to inspection by any party in interest. They shall also furnish the agent of the railroad company, or other carrier over which such commodity was shipped or carried, a report showing the weight thereof, if requested to do so. [1963 c 124 § 42.]

**22.09.430 Inspection and grading of commodities—No inspection if commodity is to be loaded into defective container.** No inspection shall be made of any commodity which is to be loaded into a vessel, vehicle, or other container, if it appears that the hold, compartment, or other enclosure into which the commodity is to be loaded is in such condition as to contaminate the commodity or lower the grade. [1963 c 124 § 43.]



**22.09.440 Inspection and grading of commodities—Unlawful practices—Penalty.** Any department employee who shall, directly or indirectly, accept any money or other consideration for any neglect of duty or any improper performance of duty as such department employee; or any person who shall knowingly cause or attempt to cause the issuance of a false or incorrect grade or weight certificate under this chapter by deceptive loading, handling, or sampling of commodities or by submitting commodities for inspection knowing that it has been so loaded, handled, or sampled, or by any other means; shall be deemed guilty of a misdemeanor. [1963 c 124 § 44.]

**22.09.450 Inspection and grading of commodities—Appeals.** (1) In case any owner, consignee, or shipper of any commodity included under the provisions of this chapter, or his agent or broker, or any warehouseman shall be aggrieved at the grading of such commodity, such aggrieved person may appeal to the department from such decision within fifteen days from the date of certificate by giving notice of appeal, and paying a fee to be fixed by the department, not exceeding twenty dollars, which shall be retained if the decision appealed is sustained, otherwise to be refunded. Such notice of appeal may be given by a letter or other written notice to the department stating the inspector's name, number of the certificate, date of inspection, and that such party appeals from such decision concerning such grade.

(2) It shall be the duty of the department upon receiving such notice of appeal to hold a hearing within twenty days and inquire into the reasonableness and correctness of such original grading and such evidence shall be received as the parties thereto may desire to offer. After such hearing the director of the department shall make such order affirming or modifying the grade so established by the inspector as the facts may justify.

(3) If the grading of any commodity for which federal standards have been fixed and the same adopted as official state standards has not been the subject of a hearing, in accordance with subsection (2) of this section, any interested party who is aggrieved with the grading of such commodity, may, with the approval of the secretary of the United States department of agriculture, appeal to the federal grain supervisor of the supervision district in which the state of Washington may be located. Such federal grain supervisor shall confer with the department inspectors and any other interested party and shall make such tests as he may deem necessary to determine the correct grade of the commodity in question. Such federal grade certificate shall be prima facie evidence of the correct grade of the commodity in any court in the state of Washington. [1963 c 124 § 45.]

**22.09.460 Inspection and grading of commodities—Fees and charges.** (1) The department shall fix the fees for inspection, grading, and weighing of the commodities included under the provisions of this chapter, which fees shall be sufficient to cover the cost of such service. The fees for inspection, weighing, and grading of such commodities shall be a lien upon the

commodity so weighed, graded, or inspected which the department may require to be paid by the carrier or agent transporting the same and treated by it as an advanced charge, except when the bill of lading contains the notation "not for terminal weight and grade," and the commodity is not unloaded at a terminal warehouse.

(2) The department is authorized to make any tests relating to grade or quality of commodities covered by this chapter. The department may inspect and approve facilities and vessels to be used in transporting such commodities and provide any other necessary services. It may fix and charge a reasonable fee to be collected from the person or his agent requesting such service.

(3) The department shall so adjust the fees to be collected under this chapter as to meet the expenses necessary to carry out the provisions hereof, and may prescribe a different scale of fees for different localities. The department may also prescribe a reasonable charge for service performed at places other than terminal warehouses in addition to the regular fees when necessary to avoid rendering the services at a loss to the state. [1963 c 124 § 46.]

**22.09.470 Inspection and grading of commodities—Scales and weighing.** If any terminal warehouse at inspection points is provided with proper scales and weighing facilities, the department may weigh the commodity upon the scales so provided. The department at least once each year shall cause to be examined, tested, and corrected, all scales used in weighing commodities in any of the cities designated as inspection points in this chapter or such places as may be hereinafter designated, and after such scale is tested, if found to be correct and in good condition, to seal the weights with a seal provided for that purpose and issue to the owner or proprietor a certificate authorizing the use of such scales for weighing commodities for the ensuing year, unless sooner revoked by the department. If such scales be found to be inaccurate or unfit for use, the department shall notify the party operating or using them, and the party thus notified shall, at his own expense, thoroughly repair the same before attempting to use them and until thus repaired or modified to the satisfaction of the department the certificate of such party shall be suspended or revoked at the discretion of the department. The party receiving such certificate shall pay to the department a reasonable fee for such inspection and certificate to be fixed by the department. It shall be the duty of the department to see that the provisions of this section are strictly enforced. [1963 c 124 § 47.]

**22.09.480 Inspection and grading of commodities—Inspection of commodities shipped to or from places other than inspection points.** In case any commodity under the provisions of this chapter is sold for delivery on Washington grade to be shipped to or from places not provided with state inspection under this chapter, the buyer, seller, or persons making delivery may have it inspected by notifying the department or its inspectors, whose duty it shall be to have such commodity inspected, and after it is inspected, to issue to the buyer, seller, or person delivering it, without undue



delay, a certificate showing the grade of such commodity. The person or persons, or his agent, calling for such inspection shall pay for such inspection a reasonable fee to be fixed by the department. [1963 c 124 § 48.]

**22.09.490 Inspection and grading of commodities—Unloading commodity without inspection or weighing.** When commodities are shipped to points where inspection is provided and the bill of lading does not contain the notation "not for terminal weight and grade" and the commodity is unloaded by or on account of the consignee or his assignee without being inspected or weighed by a duly authorized inspector under the provisions of this chapter, the shipper's weight and grade shall be conclusive and final and shall be the weight and grade upon which settlement shall be made with the seller, and the consignee or his assignee, by whom such commodities are so unlawfully unloaded shall be liable to the seller thereof for liquidated damages in an amount equal to ten percent of the sale price of such commodities computed on the basis of the shipper's weight and grade. [1963 c 124 § 49.]

**22.09.500 Disposition of revenue.** (1) All moneys collected as warehouse license fees, fees for weighing, grading, and inspecting commodities and all other fees collected under the provisions of this chapter, except as provided in subsection (2) of this section, shall be paid into the grain and hay inspection fund in the state treasury which is hereby established. Such fund shall be used for administrative expenses under this chapter and for the enforcement of all the provisions thereof. The department may use so much of such fund not exceeding five percent thereof as the director of agriculture may determine necessary for research and promotional work, including rate studies, relating to wheat and wheat products.

(2) All fees collected for the inspection, grading, and testing of hops shall be deposited into the hop inspection fund, which is hereby established, and shall be retained by the department for the purpose of inspecting, grading, and testing hops. Any moneys in any fund retained by the department on the \*effective date of this chapter and derived from hop inspection and grading shall be deposited to this hop inspection fund. For the purposes of research which would contribute to the development of superior hop varieties and to improve hop production and harvest practices, the department may expend up to twenty percent of the moneys deposited in the hop inspection fund during the fiscal year ending June 30th immediately preceding the year in which such expenditures are to be made. No expenditures shall be made under the provisions of this subsection when the hop inspection fund is, or the director may reasonably anticipate that it will be, reduced below twenty thousand dollars as the result of such expenditure or other necessary expenditures made to carry out the inspection, grading, and testing of hops. [1963 c 124 § 50.]

\*Effective date of chapter—1963 c 124: RCW 22.09.930.

**22.09.510 Transfer of moneys in grain and hay inspection fund.** All moneys in the grain and hay inspection fund as provided for in section 13, chapter 189, Laws of 1919, as amended (RCW 22.08.090) are hereby transferred to the account created under this chapter. [1963 c 124 § 51.]

**22.09.520 Deposits as bailments.** Whenever any commodity shall be delivered to a warehouse under this chapter, and the warehouse receipt issued therefor provides for the return of a like amount of like kind, grade, and class to the holder thereof, such delivery shall be a bailment and not a sale of the commodity so delivered. In no case shall such commodities be liable to seizure upon process of any court in an action against such bailee, except action by the legal holder of the warehouse receipt to enforce the terms thereof. Such commodities, in the event of failure or insolvency of such bailee, shall be applied exclusively to the redemption of such outstanding warehouse receipts and scale weight tickets covering commodities so stored with such bailee. The commodities on hand in any warehouse or warehouses with a particular license, as provided in RCW 22.09.030, shall be applied to the redemption and satisfaction of warehouse receipts and scale weight tickets which were issued pursuant to the particular license. Commodities in special piles or special bins shall be applied exclusively against the warehouse receipts or scale weight tickets issued therefor. [1963 c 124 § 52.]

**22.09.530 Fumigated conveyances to be labeled.** It shall be unlawful to ship commodities in closed conveyances which have been fumigated without labeling such railroad car, vehicle, or other conveyance to show that it has been fumigated. The label shall show the type of fumigant used and the date of application. [1963 c 124 § 53.]

**22.09.540 Injunctions.** The director may bring an action in the name of the state to temporarily and/or permanently enjoin the violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court in the county in which such violation occurs notwithstanding the existence of any other remedy at law. [1963 c 124 § 54.]

**22.09.550 Cooperation with governmental agencies and private associations.** The director may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this chapter and the United States Warehouse Act (7 USCA § 241 et seq.). [1963 c 124 § 55.]

**22.09.560 General penalty.** A violation of any provision or section of this chapter, where no other penalty is provided for, and the violation of any rule or regulation adopted hereunder shall constitute a misdemeanor. [1963 c 124 § 58.]

**22.09.570 Action on bond by director or depositor—Authorized—Grounds.** The director or any depositor of any agricultural commodity may bring action upon said bond against both principal and surety in any court of competent jurisdiction to recover the damages caused by any failure to comply with the provisions of this chapter or the rules and regulations adopted hereunder. [1975 1st ex.s. c 7 § 29.]

**22.09.580 Action on bond by director—Failure of depositor creditor to file claim upon request—Effect.** If a depositor creditor after notification fails, refuses or neglects to file in the office of the director his verified claim as requested by the director within sixty days from the date of such request, the director shall thereupon be relieved of further duty or action hereunder on behalf of said depositor creditor. [1975 1st ex.s. c 7 § 30.]

**22.09.590 Action on bond by director—Records as to depositor creditors missing or information incomplete—Effect.** Where by reason of the absence of records, or other circumstances making it impossible or unreasonable for the director to ascertain the names and addresses of all said depositor creditors, the director after exerting due diligence and making reasonable inquiry to secure said information from all reasonable and available sources, may make demand on said bond on the basis of information then in his possession, and thereafter shall not be liable or responsible for claims or the handling of claims which may subsequently appear or be discovered. [1975 1st ex.s. c 7 § 31.]

**22.09.600 Action on bond by director—Powers and duties.** Upon ascertaining all claims and statements in the manner herein set forth, the director may then make demand upon the bond on behalf of those claimants whose statements have been filed, and shall have the power to settle or compromise said claims with the surety company on the bond, and is empowered in such cases to execute and deliver a release and discharge of the bond involved. [1975 1st ex.s. c 7 § 32.]

**22.09.610 Action on bond by director—When authorized—New bond, when required.** Upon the refusal of the surety company to pay the demand the director may thereupon bring an action on the bond in behalf of said depositor creditors. Upon any action being commenced on said bond the director may require the filing of a new bond and immediately upon the recovery in any action on such bond such warehouseman shall file a new bond and upon failure to file the same within ten days in either case such failure shall constitute grounds for the suspension or revocation of his license. [1975 1st ex.s. c 7 § 33.]

**22.09.620 Payment for agricultural commodities purchased—Time requirements.** Every warehouseman must pay for agricultural commodities purchased by him at the time and in the manner specified in the contract with the depositor, but if no time is set by such contract,

then within thirty days after taking possession for purpose of sale or taking title of such agricultural product. [1975 1st ex.s. c 7 § 34.]

**22.09.630 Payment violations—Recovery by department—Charges to depositors.** When a violation has occurred which results in improper payment or non-payment and a claim is made to the department and the payment is secured through the actions of the department the following charges will be made to the depositor for the action of the department in the matter:

(1) When reported within thirty days from time of default, no charge.

(2) When reported thirty days to one hundred eighty days from time of default, five percent.

(3) When reported after one hundred eighty days from time of default, ten percent. [1975 1st ex.s. c 7 § 35.]

**22.09.900 Continuation of rules adopted pursuant to repealed chapter.** The repeal of chapter 22.08 RCW and the enactment of this chapter shall not be deemed to have repealed any rules adopted under the provisions of chapter 22.08 RCW and in effect immediately prior to such repeal and not inconsistent with the provisions of this chapter. For the purpose of this chapter it shall be deemed that such rules have been adopted under the provisions of this chapter pursuant to the provisions of chapter 34.04 RCW concerning the adoption of rules. [1963 c 124 § 56.]

**22.09.910 Savings—1963 c 124.** The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on July 1, 1963. [1963 c 124 § 57.]

**22.09.920 Construction as to Uniform Warehouse Receipts Act.** Nothing herein contained, with the exception of RCW 22.09.290(1)(b), shall be deemed to repeal, amend, or modify the \*Uniform Warehouse Receipts Act (chapter 22.04 RCW). [1963 c 124 § 59.]

\*Reviser's note: "Uniform Warehouse Receipts Act (chapter 22.04 RCW)" was repealed by 1965 ex.s. c 157, for later enactment see warehouse receipts, bills of lading and other documents of title—Uniform commercial code: Article 62A.7 RCW.

**22.09.930 Effective date—1963 c 124.** The effective date of this chapter shall be July 1, 1963. [1963 c 124 § 60.]

**22.09.940 Severability—1963 c 124.** If any section, sentence, clause, or part of this chapter is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this chapter. The legislature hereby declares that it would have passed this chapter and each section, sentence, clause, and part thereof despite the fact that one or more sections, clauses, sentences, or parts thereof be declared unconstitutional. [1963 c 124 § 61.]

**22.09.950 Repealer.** The following acts or parts of acts and RCW chapters are hereby repealed:

(1) (a) Sections 2, 5, 9, 10, 30, and 40, chapter 109, Laws of 1895;

(b) Sections 1, 5 through 7, 9 through 14, 16, 20 through 22, 24, 29, 30 and 31, chapter 137, Laws of 1909;

(c) Sections 1, 2, 6 through 23, and 25 through 31, chapter 91, Laws of 1911;

(d) Chapter 170, Laws of 1915;

(e) Sections 1, 2, 6 through 23, 25 through 33 and 35, chapter 189, Laws of 1919;

(f) Chapter 74, Laws of 1921;

(g) Section 1, chapter 137, Laws of 1921;

(h) Chapter 144, Laws of 1921;

(i) Sections 2, 3, 6 and 7, chapter 145, Laws of 1921;

(j) Section 4, chapter 154, Laws of 1921;

(k) Chapter 48, Laws of 1923;

(l) Section 8, chapter 123, Laws of 1923;

(m) Chapter 146, Laws of 1923;

(n) Sections 2 through 5, chapter 46, Laws of 1931;

(o) Section 1, chapter 186, Laws of 1933;

(p) Section 1, chapter 25, Laws of 1933 extraordinary session;

(q) Chapter 157, Laws of 1935;

(r) Sections 1 through 9 and 12, chapter 90, Laws of 1937;

(s) Chapter 103, Laws of 1947;

(t) Chapter 171, Laws of 1951;

(u) Chapter 149, Laws of 1953;

(v) Chapter 164, Laws of 1955;

(w) Section 1, chapter 300, Laws of 1955;

(x) Chapter 315, Laws of 1955;

(y) Sections 2 and 3, chapter 388, Laws of 1955; and

(2) (a) Chapter 22.01 RCW;

(b) Chapter 22.08 RCW;

(c) Chapter 22.12 RCW;

(d) Chapter 22.14 RCW [1963 c 124 § 62.]

### Chapter 22.16

## WAREHOUSES AND ELEVATORS—EMINENT DOMAIN

### Sections

22.16.010 Right of eminent domain extended.

22.16.020 Right of entry.

22.16.030 Extent of appropriation.

22.16.040 Limitations on right—Finding of public necessity.

**Reviser's note:** The term "director of the department of agriculture" substituted for "public service commission" in this chapter since the powers and duties of the commission devolved upon the director of agriculture by virtue of 1921 c 7 § 90, 1921 c 137 §§ 1, 2, 1921 c 145 § 8 and 1937 c 90 § 10.

**22.16.010 Right of eminent domain extended.** The right of eminent domain is hereby extended to corporations incorporated or that may hereafter be incorporated under the laws of this state, or of any other state or territory and qualified to transact business in this state for the purpose of acquiring, owning or operating public warehouses or elevators for storing and handling grain, produce and other agricultural commodities which may desire to secure warehouse or elevator sites or rights of way for roadways leading to and from the same or for wharves or boat landings on navigable waters and all

other purposes incident to and connected with the business conducted by such warehouse or elevator. [1919 c 98 § 1; RRS § 11566.]

**22.16.020 Right of entry.** Every corporation incorporated or that may hereafter be incorporated under the laws of this state or of any other state or territory, and qualified to transact business in this state for the purpose of acquiring, owning or operating public warehouses or elevators for storing and handling grain, produce and other agricultural commodities which may desire to erect and operate any such public warehouse or elevator, or to erect and operate tramways or cable tramways for the purpose of carrying, conveying or transporting such grain, produce or commodities to or from such warehouse or elevator or to acquire rights of way for roadways to and from such warehouse or elevator or to acquire boat landing or wharving facilities in connection with such warehouse or elevator shall have the right to enter upon any lands proposed to be used for any such purpose for the purpose of examining, locating and surveying the lines and boundaries thereof, doing no unnecessary damage thereby. [1919 c 98 § 2; RRS § 11567.]

**22.16.030 Extent of appropriation.** Every such corporation shall have the right to appropriate real estate and other property for any or all of the said purposes and under the same procedure as now is or may be hereafter provided by law, in the case of other corporations authorized by the laws of this state to exercise the right of eminent domain. [1919 c 98 § 3; RRS § 11568.]

**22.16.040 Limitations on right—Finding of public necessity.** The right hereby granted shall not be exercised within the limits of any regularly organized port district, nor against the right of way of any railroad company within the yard limits thereof, nor unless and until the director of the department of agriculture after a full hearing shall have determined that existing facilities are inadequate and that a public necessity exists for the construction of additional facilities and shall specify what additional facilities are necessary and shall have further determined that the facilities contemplated to be established will be a public benefit. Such hearing shall be initiated and conducted in accordance with the statutes, rules and regulations relating to public hearings before the director. [1919 c 98 § 4; RRS § 11569.]

### Chapter 22.28

## SAFE DEPOSIT COMPANIES

### Sections

22.28.010 Definitions.

22.28.020 Safe deposit company a warehouseman.

22.28.030 Exercise of due care required.

22.28.040 Procedure when rent is unpaid.

22.28.060 Destruction of paper contents—Other remedies available.

*Financial institutions as bailee:* RCW 30.08.140, 32.08.140, 33.12.010.

*Inheritance taxes, department's powers:* Chapter 83.36 RCW.

*Trust receipts:* Articles 62A.1, 62A.9 RCW.

*Unclaimed property in hands of bailee:* Chapter 63.24 RCW.

*Uniform disposition of unclaimed property act:* Chapter 63.28 RCW.

**22.28.010 Definitions.** The term safe deposit company as used in RCW 22.28.010 through 22.28.060 shall be construed to extend to and include all banks, trust companies and other corporations organized under the laws of the state of Washington or of the United States of America, and doing business in the state of Washington; which are empowered by law to let vaults, safes or other receptacles upon the premises occupied by such bank, trust company or corporation. [1923 c 186 § 1; RRS § 3382.]

**22.28.020 Safe deposit company a warehouseman.** Whenever any safe deposit company shall take or receive as bailee for hire and for safekeeping or storage any jewelry, plate, money, specie, bullion, stocks, bonds, mortgages, securities, or valuable paper of any kind, or other valuable personal property, and shall have issued a receipt therefor, it shall be deemed to be a warehouseman as to such property and the provisions of the uniform warehouse receipts act, same being \*chapter 22.04 RCW, shall apply to such deposit, or to the proceeds thereof, to the same extent and with the same effect, and be enforceable in the same manner as is now provided with reference to warehousemen in said act. [1923 c 186 § 2; RRS § 3383.]

**\*Reviser's note:** "chapter 22.04 RCW" was repealed by 1965 ex.s. c 157, for later enactment see warehouse receipts, bills of lading and other documents—Uniform commercial code: Article 62A.7 RCW.

**22.28.030 Exercise of due care required.** Whenever any safe deposit company shall let or lease any vault, safe, box or other receptacle for the keeping or storage of personal property such safe deposit company shall be bound to exercise due care to prevent the opening of such vault, safe, box or receptacle by any person other than the lessee thereof, or his or her duly authorized agent, and said parties may provide in writing the terms, conditions and liabilities in said lease. [1923 c 186 § 3; RRS § 3384.]

**22.28.040 Procedure when rent is unpaid.** If the amount due for the rental of any safe or box in the vaults of any safe deposit company shall not have been paid for one year, it may, at the expiration thereof, send to the person in whose name such safe or box stands on its books a notice in writing in a securely closed, postpaid and registered letter, directed to such person at his post office address, as recorded upon the books of the safe deposit company, notifying such person that if the amount due for the rental of such safe or box is not paid within thirty days from date, the safe deposit company will then cause such safe or box to be opened, and the contents thereof to be inventoried, sealed, and placed in one of its general safes or boxes.

Upon the expiration of thirty days from the date of mailing such notice, and the failure of the person in whose name the safe or box stands on the books of the company to pay the amount due for the rental thereof to the date of notice, the corporation may, in the presence of a notary public and of its president or secretary, cashier or treasurer, cause such safe or box to be opened,

and the contents thereof, if any, to be removed, inventoried and sealed up by such notary public in a package, upon which the notary public shall distinctly mark the name of the person in whose name the safe or box stood on the books of the company, and the date of removal of the property, and when such package has been so marked for identification by the notary public, it shall, in the presence of the president, secretary, treasurer or cashier of the company, be placed by the notary public in one of the general safes or boxes of the company at a rental not to exceed the original rental of the safe or box which was opened, and shall remain in such general safe or box for a period of not less than two years, unless sooner removed by the owner thereof, and the notary public shall thereupon file with the company a certificate under seal, which shall fully set out the date of the opening of such safe or box, the name of the person in whose name it stood and a list of the contents, if any.

A copy of such certificate shall within ten days thereafter be mailed to the person in whose name the safe or box so opened stood on the books of the company, at his last known post office address, in a securely closed, postpaid and registered letter, together with a notice that the contents will be kept, at the expense of such person, in a general safe or box in the vaults of the company, for a period of not less than two years. At any time after the mailing of such certificate and notice, and before the expiration of two years, such person may require the delivery of the contents of the safe as shown by said certificate, upon the payment of all rentals due at the time of opening of the safe or box, the cost of opening the box, the fees of the notary public for issuing his certificate thereon, and the payment of all further charges accrued during the period the contents remained in the general safe or box of the company.

After the expiration of two years from the time of mailing the certificate herein provided for, the company shall mail in a securely closed postpaid registered letter, addressed to such person at his last known post office address, a notice stating that two years have elapsed since the opening of the safe or box and the mailing of the certificate thereof, and that the company will sell all the property or articles of value set out in said certificate, at a time and place to be stated in such notice, not less than thirty days after the time of mailing such notice, and stating the amount which shall have then become due for rental up to the time of opening such safe, the cost of opening thereof, and the further cost of safekeeping all of its contents for the period since the opening of the safe or box. Unless such person shall pay on or before the day mentioned all said sums, and all the charges accruing to the time of payment, including advertising, the company may sell all the property or articles of value set out in said certificate, at public auction, at the time and place stated in said notice, provided a notice of the time and place of sale has been published once within ten days prior to the sale in a newspaper published in the county where the sale is held.

From the proceeds of the sale, the company shall deduct all its charges as stated in said notice, together with any further charges that shall have accrued since the mailing thereof, including reasonable expenses for

notices, advertising, and sale. The balance, if any, of such proceeds shall be deposited by the company within thirty days after the receipt of the same, with the county treasurer, of the county where the sale was held. The company shall file with such deposit a certificate stating the name and last known place of residence of the owner of the property sold, the articles sold, the price obtained therefor, and showing that the notices herein required were duly mailed and that the sale was advertised as required herein. The officer with whom such balance is deposited shall credit the same to the owner of the property, and pay the same to such owner, his assignee, or legal representative, on demand and satisfactory evidence of identity. If such balance remains in the possession of such officer for a period of ten years, unclaimed by the person legally entitled thereto, it shall be transferred to the state treasurer for the benefit of the permanent school fund of the state of Washington. [1923 c 186 § 4; RRS § 3385. Formerly RCW 22.08.050, 22.28.040.]

**22.28.060 Destruction of paper contents—Other remedies available.** Whenever the contents of any such safe or box, so opened, shall consist either wholly or in part, of documents or letters or other papers of a private nature, such documents, letters, or papers shall not be sold, but shall be retained by the company for a period of five years from the time of the opening of the box, and, unless sooner claimed by the owner, may be thereafter destroyed in the presence of an officer of the corporation and a notary public not an officer or employee of the corporation.

The provision of this section shall not preclude any other remedy by action or otherwise now existing for the enforcement of the claims of a corporation against the person in whose name such safe or box stood, nor bar the right of a safe deposit company to recover so much of the debt due it as shall not be paid by the proceeds of the sale of the property deposited with it. [1923 c 186 § 5; RRS § 3386. Formerly RCW 22.28.060, 22.28.070.]

### Chapter 22.32 GENERAL PENALTIES

#### Sections

- 22.32.010 Warehouseman or carrier refusing to issue receipt.
- 22.32.020 Fictitious bill of lading and receipt.
- 22.32.030 Fraudulent tampering with or mixing goods.
- 22.32.040 Issuance of second receipt not marked "duplicate"
- 22.32.050 Delivery of goods without taking up receipt.

*Crimes relating to corporations: Chapter 9.24 RCW.*

*Warehouse receipts, bills of lading and other documents—Uniform commercial code: Article 62A.7 RCW.*

**22.32.010 Warehouseman or carrier refusing to issue receipt.** Every person or corporation, and every officer, agent and employee thereof, receiving any goods, wares or merchandise, for sale or on commission, for storage, carriage or forwarding, who, having an opportunity to inspect the same, shall fail or refuse to deliver to the owner thereof a receipt duly signed, bearing the date of issuance, describing the goods, wares or merchandise received and the quantity, quality and condition thereof,

and specifying the terms and conditions upon which they are received, shall be guilty of a misdemeanor. [1909 c 249 § 391; RRS § 2643.]

**22.32.020 Fictitious bill of lading and receipt.** Every person or corporation engaged wholly or in part in the business of a common carrier or warehouseman, and every officer, agent or employee thereof, who shall issue any bill of lading, receipt or other voucher by which it shall appear that any goods, wares or merchandise have been received by such carrier or warehouseman, unless the same have been so received and shall be at the time actually under his control, or who shall issue any bill of lading, receipt or voucher containing any false statement concerning any material matter, shall be guilty of a gross misdemeanor. But no person shall be convicted under this section for the reason that the contents of any barrel, box, case, cask or other closed vessel or package mentioned in the bill of lading, receipt or voucher did not correspond with the description thereof in such instrument, if such description corresponds substantially with the mark on the outside of such barrel, box, case, cask, vessel or package, unless it appears that the defendant knew that such marks were untrue. [1909 c 249 § 392; RRS § 2644. Prior: 1891 c 69 § 7; Code 1881 § 836; 1873 p 193 § 62; 1854 p 85 § 56.]

**22.32.030 Fraudulent tampering with or mixing goods.** Every person mentioned in RCW 22.32.020, who shall fraudulently mix or tamper with any goods, wares or merchandise under his control, shall be guilty of a gross misdemeanor. [1909 c 249 § 393; RRS § 2645.]

*Reviser's note:* Caption for 1909 c 249 § 393 reads as follows: "*Sec. 393. Warehouseman Fraudulently Mixing Goods.*"

**22.32.040 Issuance of second receipt not marked "duplicate".** Every person mentioned in RCW 22.32.020, who shall issue any second or duplicate receipt or voucher of the kind specified in said section, while a former receipt or voucher for the goods, wares or merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "Duplicate," in a plain and legible manner, shall be guilty of a misdemeanor. [1909 c 249 § 394; RRS § 2646.]

*Reviser's note:* Caption for 1909 c 249 § 394 reads as follows: "*Sec. 394. Duplicate Receipt.*"

**22.32.050 Delivery of goods without taking up receipt.** Each person mentioned in RCW 22.32.020 who shall deliver to another any goods, wares or merchandise for which a bill of lading, receipt or voucher has been issued, unless such bill of lading, receipt or voucher is surrendered and canceled or a lawful and sufficient bond or undertaking is given therefor at the time of such delivery, or unless, in case of a partial delivery, a memorandum thereof is endorsed upon such bill of lading, receipt or voucher, shall be guilty of a misdemeanor. [1909 c 249 § 395; RRS § 2647.]

*Reviser's note:* Caption for 1909 c 249 § 395 reads as follows: "*Sec. 395. Bill of Lading or Receipt Must be Canceled on Redelivery of Property.*"

# TITLE 23

## CORPORATIONS AND ASSOCIATIONS (PROFIT)

### (BUSINESS CORPORATION ACT: SEE TITLE 23A RCW)

#### Chapters

**23.01** Private business corporations act.  
**23.72** Miscellaneous—Preferences by insolvent corporations.  
**23.86** Cooperative associations.  
**23.90** Massachusetts trusts.

Reviser's note: See Title 23A RCW for the Washington Business Corporation Act.

Acknowledgment form, corporations: RCW 64.08.070.  
Acquisition of corporate stock by another corporation to lessen competition declared unlawful—Exceptions—Judicial order to divest: RCW 19.86.060.  
Actions by and against public corporations: RCW 4.08.110, 4.08.120.  
Alien land law: Chapter 64.16 RCW.  
Attachment: Chapter 7.12 RCW.  
Banks and trust companies: Title 30 RCW.  
Blue sky law: Chapter 21.20 RCW  
Boom companies: Chapter 76.28 RCW.  
Bulk sales law: Title 62A RCW.  
Businesses and professions, generally: Titles 18 and 19 RCW.  
Cemeteries: Chapters 68.20, 68.24 RCW.  
Commerce and economic development: Chapter 43.31 RCW.  
Constitutional provisions, generally: State Constitution Art. 12.  
Contributions by banks, etc.: RCW 30.04.340–30.04.360.  
Corporations for educational, social, religious, fraternal, etc., purposes: Title 24 RCW.  
Corporations organized by units of state militia: RCW 38.40.130.  
Corrupting employees: Chapter 49.44 RCW.  
Credit unions: Chapter 31.12 RCW.  
Crimes relating to corporations: Chapter 9.24 RCW.  
Criminal procedure: RCW 10.01.070–10.01.100.  
Crop credit associations: Chapter 31.16 RCW.  
Dentistry, practice or solicitation prohibited: RCW 18.32.310.  
Dissolution, forfeiture of corporate franchise for violation of consumer protection act: RCW 19.86.150.  
Doing business without license, gross misdemeanor: RCW 9.24.040.  
Drivers' training schools: Chapter 46.82 RCW.  
Eminent domain by corporations: Chapter 8.20 RCW.  
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Farm marketing associations: Chapter 24.32 RCW.  
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Foreign corporations not to be favored as against domestics: State Constitution Art. 12 § 7.  
Forgery: RCW 9A.60.020.  
Fraud in stock subscription: RCW 9.24.010.  
Fraudulent issue of stock: RCW 9.24.020.  
Game farmers, corporate application: RCW 77.28.040.  
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Garnishment, issuance of writ from justice court: RCW 7.33.050.

Garnishment, justice court, service of writ: RCW 7.33.130–7.33.140.  
Graft by employees: Chapter 49.44 RCW  
Humane societies: Chapter 16.52 RCW.  
Industrial loan companies: Chapter 31.04 RCW.  
Inheritance tax on stock: RCW 83.44.030.  
Insurance companies, generally: Title 48 RCW.  
Insurance companies, organization: Chapter 48.06 RCW.  
Insurance company dividends to stockholders: RCW 48.08.030.  
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Liability of stockholders: State Constitution Art. 12 § 4.  
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Limitations on issuance of securities, increase of stock: State Constitution Art. 12 § 6.  
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Monopolies, trusts prohibited: State Constitution Art. 12 § 22.  
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Photostatic, photographic copies of business records as evidence: RCW 40.20.030.  
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**Title 23**

**Title 23: Corporations and Associations (Profit)  
(Business Corporation Act: See Title 23A RCW)**

*Uniform disposition of unclaimed personal property: Chapter 63.28 RCW*

*Uniform gifts to minors act: Chapter 21.24 RCW.*

*Uniform photographic copies of business and public records as evidence act: Chapter 5.46 RCW.*

*Venue in action against: RCW 4.12.025.*

*Venue of actions against corporations: RCW 4.12.025.*

*Warehousing and deposits: Title 22 RCW.*

*Washington business corporation act: Title 23A RCW.*

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**Chapter 23.01**

**PRIVATE BUSINESS CORPORATIONS ACT**

Sections

23.01.227 Community property agreements—Transfers of shares pursuant to direction of surviving spouse.

**23.01.227 Community property agreements—Transfers of shares pursuant to direction of surviving spouse.** See RCW 23A.08.325.

**Chapter 23.72**

**MISCELLANEOUS—PREFERENCES BY INSOLVENT CORPORATIONS**

Sections

- 23.72.010 Definitions.
- 23.72.020 Action to recover—Limitation.
- 23.72.030 Preference voidable, when—Recovery.
- 23.72.040 Mutual debts and credits.
- 23.72.050 Attorney's fees—Reexamination.
- 23.72.060 Setoffs and counterclaims.

**23.72.010 Definitions.** Words and terms used in this chapter shall be defined as follows:

(1) "Receiver" means any receiver, trustee, common law assignee, or other liquidating officer of an insolvent corporation;

(2) "Date of application" means the date of filing with the clerk of the court of the petition or other application for the appointment of a receiver, pursuant to which application such appointment is made; or in case the appointment of a receiver is lawfully made without court proceedings, it means the date on which the receiver is designated, elected or otherwise authorized to act as such;

(3) "Preference" means a judgment procured or suffered against itself by an insolvent corporation or a transfer of any of the property of such corporation, the effect of the enforcement of which judgment or transfer at the time it was procured, suffered, or made, would be to enable any one of the creditors of such corporation to obtain a greater percentage of his debt than any other creditor of the same class;

(4) "Insolvent" means, for the purposes of this chapter, a condition whereby the aggregate of a corporation's property, exclusive of any property which it may have conveyed, transferred, concealed, removed or permitted to be concealed or removed, with intent to defraud, hinder, or delay its creditors, shall not at a fair valuation be sufficient in amount to pay its debts. [1959 c 219 § 1; 1941 c 103 § 1; Rem. Supp. 1941 § 5831-4. Formerly RCW 23.48.010.]

**23.72.020 Action to recover—Limitation.** If not otherwise limited by law, actions in the courts of this state by a receiver to recover preferences may be commenced at any time within but not after six months, from the date of application for the appointment of such receiver. [1941 c 103 § 2; Rem. Supp. 1941 § 5831-5. Formerly RCW 23.48.020.]

**23.72.030 Preference voidable, when—Recovery.** Any preference made or suffered within four months before the date of application for the appointment of a



receiver may be avoided and the property or its value recovered by such receiver, if the person receiving the preference or to be benefited thereby or his agent acting therein shall then have reasonable cause to believe that the debtor corporation is insolvent. No preference made or suffered prior to such four months' period may be recovered, and all provisions of law or of the trust fund doctrine permitting recovery of any preference made beyond such four months' period are hereby specifically superseded. [1959 c 219 § 2; 1941 c 103 § 3; Rem. Supp. 1941 § 5831-6. Formerly RCW 23.48.030.]

**23.72.040 Mutual debts and credits.** In any action by a receiver against a creditor to avoid and recover a preference such creditor may set off against the amount of such preference an amount equal to any credit or credits given by such creditor to the corporation within four months prior to the date of application for the appointment of the receiver when such credit or credits were given in good faith without security of any kind for property which became a part of the assets of the corporation. [1941 c 103 § 4; Rem. Supp. 1941 § 5831-7. Formerly RCW 23.48.040.]

**23.72.050 Attorney's fees—Reexamination.** If a corporation shall directly or indirectly in contemplation of the appointment of a receiver of such corporation pay money or transfer property to an attorney or counselor at law, solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be reexamined by the court on petition of the receiver of such corporation or any creditor and shall be held valid only to the extent of a reasonable amount to be determined by the court and any excess may be recovered by the receiver for the benefit of the creditors of such corporation. [1941 c 103 § 5; Rem. Supp. 1941 § 5831-8. Formerly RCW 23.48.050.]

**23.72.060 Setoffs and counterclaims.** (1) In all cases of mutual debts or mutual credits between the corporation and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid: *Provided*, That as against voidable preferences the only offsets shall be the credits specified in RCW 23.72.050.

(2) A setoff or counterclaim shall not be allowed in favor of any debtor of the corporation which (1) is not provable against the corporation, or (2) was purchased by or transferred to him after the appointment of a receiver for such corporation, or within four months before the date of application for the appointment of such receiver, with a view to such use and with knowledge or notice that such corporation was insolvent. [1941 c 103 § 6; Rem. Supp. 1941 § 5831-9. Formerly RCW 23.48.060 and 23.48.070.]

**Chapter 23.86  
COOPERATIVE ASSOCIATIONS**

Sections	
23.86.010	Cooperative associations—Who may organize.
23.86.020	Business authorized.
23.86.030	Term "cooperative" limited.

23.86.040	When to do business—Liability.
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23.86.060	Articles—Verification—Filing.
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23.86.190	Cooperative associations under former laws.
23.86.200	Definitions.
23.86.210	Conversion of cooperative association to domestic ordinary business corporation—Procedure.
23.86.220	Merger of cooperative association with one or more cooperative associations or business corporations—Procedure.
23.86.230	Merger of cooperative association with one or more cooperative associations or business corporations—Rights, powers, duties and liabilities of surviving entity—Articles.

*Crop credit associations, powers: RCW 31.16.090.*

*Exemptions to commission merchant's act: RCW 20.01.030.*

**23.86.010 Cooperative associations—Who may organize.** Any number of persons, not less than five, may associate themselves together as a cooperative association, society, company or exchange for the transaction of any lawful business on the cooperative plan. For the purposes of this chapter the words "association," "company," "exchange," "society" or "union" shall be construed the same. [1913 c 19 § 1; RRS § 3904. Formerly RCW 23.56.010.] [1954 SLC-RO-7]

**Severability—1913 c 19:** "If any section or part of a section of this act shall for any cause be held unconstitutional such fact shall not affect the remainder of this act." [1913 c 19 § 20.] This applies to RCW 23.86.010-23.86.190.

**23.86.020 Business authorized.** An association created under this chapter, being for mutual welfare, the words "lawful business" shall extend to every kind of lawful effort for business, agricultural, dairy, mercantile, mining, manufacturing or mechanical business, on the cooperative plan. [1913 c 19 § 7; RRS § 3910. Formerly RCW 23.56.020.]

**23.86.030 Term "cooperative" limited.** No corporation or association organized or doing business for profit in this state shall be entitled to use the term "cooperative" as a part of its corporate or other business name or title, unless it has complied with the provisions of this chapter; and any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any stockholder or any association legally organized hereunder. [1913 c 19 § 17; RRS § 3920. Formerly RCW 23.56.030.]

**23.86.040 When to do business—Liability.** No cooperative association organized under the provisions of this chapter shall be permitted to do business until one-fourth of the capital stock of said association shall have

**23.86.040****Title 23: Corporations and Associations (Profit)  
(Business Corporation Act: See Title 23A RCW)**

been subscribed and paid in to said association. The liability of each stockholder shall be limited to the amount remaining unpaid on his subscription to the capital stock of said association. [1925 ex.s. c 99 § 3; 1913 c 19 § 18; RRS § 3921. Formerly RCW 23.56.040.]

**23.86.050 Articles—Contents.** Every association formed under this chapter shall prepare articles of association in writing, which shall set forth:

- (1) The name of the association.
- (2) The purpose for which it was formed.
- (3) Its principal place of business.
- (4) The term for which it is to exist which may be perpetual.
- (5) The amount of capital stock, the number of shares and the par value of each share. [1961 c 34 § 1; 1913 c 19 § 2; RRS § 3905. Formerly RCW 23.56.050.]

**23.86.060 Articles—Verification—Filing.** The original articles of associations organized under this chapter or a true copy thereof verified to be such by the affidavits of two of the signers thereof, shall be filed with the secretary of state. Whenever a certified copy of the same accompanied by a certificate of the secretary of state showing that the same has been filed in his office, is filed with the county auditor of the county in which is located the principal place of business of said association, the said association shall be deemed to be legally organized. [1913 c 19 § 3; RRS § 3906. Formerly RCW 23.56.060.]

**23.86.070 Filing fees.** For filing articles of association organized under this chapter there shall be paid to the secretary of state the sum of twenty-five dollars and for filing of an amendment thereof the sum of ten dollars. For filing the articles of association the county auditor shall charge the sum of two dollars. For filing any amendment the county auditor shall charge the sum of one dollar. Associations organized under this chapter shall not be subject to any corporation license fees excepting the fees hereinabove enumerated. [1959 c 263 § 2; 1953 c 214 § 1; 1925 ex.s. c 99 § 1; 1913 c 19 § 4; RRS § 3907. Formerly RCW 23.56.070.]

**23.86.080 Trustees.** Every such association shall be managed by a board of not less than three trustees. The trustees shall be elected by and from the stockholders of the association at such time and for such term of office as the bylaws may prescribe, and shall hold office during the term for which they were elected and until their successors are elected and qualified; but a majority of the stockholders shall have the power at any regular or special meeting, legally called for that purpose to remove any trustee or officer for cause, and fill the vacancy. The officers of every such association shall be a president, one or more vice presidents, a secretary and a treasurer who shall be elected annually by the trustees. Each of said officers must be a member of the association. All elections shall be by ballot. [1913 c 19 § 5; RRS § 3908. Formerly RCW 23.56.080.]

**23.86.090 Amendments to articles.** The articles of association may be amended by a majority vote of the stockholders at any regular stockholders' meeting or at any special stockholders' meeting called for that purpose, on twenty days' written notice being given to the stockholders. The power to amend shall include the power to extend the period of its duration for a further definite time or perpetually, and also include the power to increase or diminish the amount of capital stock and the number of shares: *Provided*, The amount of the capital stock shall not be diminished below the amount of the paid-up capital stock at the time such amendment is adopted. Within thirty days after the adoption of an amendment to its articles of association, the association shall cause a copy of such amendment adopted to be recorded in the office of the secretary of state and of the county auditor of the county where its principal place of business is located. [1961 c 34 § 2; 1913 c 19 § 6; RRS § 3909. Formerly RCW 23.56.090.]

**23.86.100 Bylaws.** Any association formed under this chapter may pass bylaws to govern itself in the carrying out of the provisions of this chapter which are not inconsistent with the provisions of this chapter. [1913 c 19 § 19; RRS § 3922. Formerly RCW 23.56.100.]

**23.86.110 Stock—Issues—Vote—Limits.** Certificates of stock shall not be issued to any subscriber until fully paid for, but the bylaws of the association may allow subscribers to vote as stockholders if one-fifth of the subscription has been paid for.

No stockholder in any such association shall own more than one-fifth of the stock of the association. For the purpose of equalizing the stock ownership of its stockholders any such association may from time to time purchase stock from any stockholder. Such association may also purchase the stock of any stockholder who ceases to produce for the association any of the commodities in which it deals. Payment for any stock purchased may be made out of any available funds whether surplus or not.

No stockholder at any meeting shall be entitled to more than one vote. [1959 c 12 § 4; 1953 c 258 § 1. Prior: (i) 1913 c 19 § 11, part; RRS § 3914, part. (ii) 1925 ex.s. c 99 § 2; 1913 c 19 § 8; RRS § 3911. Formerly RCW 23.56.110, part and 23.56.140.]

**23.86.120 Subscriptions for stock in other associations.** At any regular meeting or any regularly called special meeting at which at least a majority of all the stockholders shall be present, or represented, an association organized under this chapter may by a majority vote of the stockholders present or represented, subscribe for shares and invest its reserve fund or any part thereof in the capital stock of any other cooperative association. [1913 c 19 § 9; RRS § 3912. Formerly RCW 23.56.120.]

**23.86.130 Purchasing business of other associations.** Whenever an association organized under this chapter shall purchase any stock of another association or the interest or any part thereof of any person or persons,

firm or partnership engaged in any lawful business as defined in RCW 23.86.020, it may pay for the same in whole or in part by issuing to the selling association or person, firm or partnership, shares of its capital stock to an amount which at par value, would equal the fair market value of the stock or interest so purchased and in such case the transfer to the association of such stock or interest so purchased at such valuation shall be equivalent to payment in cash for the shares of stock so issued. [1913 c 19 § 10; RRS § 3913. Formerly RCW 23.56.130.]

**23.86.140 Stock—Held in trust, when.** In case the cash value of such stock or interest so purchased exceeds one-fifth of the par value of the purchasing association, the trustees of the purchasing association are authorized to hold the shares in excess of one-fifth of the par value of the purchasing association, in trust for the vendor and dispose of the same to such person or persons and within such time as may be mutually agreed upon by the parties in interest, and shall pay the proceeds thereof as currently received to the former owners thereof. [1959 c 12 § 5. Prior: 1913 c 19 § 11; RRS § 3914. Formerly RCW 23.56.110, part and 23.56.140.]

**23.86.150 Stockholders may vote by mail.** At any regular, called, general or special meeting of the stockholders, a written vote received by mail from any absent stockholder and signed by him may be read in such meeting and shall be equivalent to a vote of each of the stockholders so signing: *Provided*, He has been previously notified in writing of the exact motion or resolution upon which such vote is taken and a copy of same is forwarded with and attached to the vote so mailed by him. [1913 c 19 § 12; RRS § 3915. Formerly RCW 23.56.150.]

**23.86.160 Apportionment of earnings.** The trustees may apportion the net earnings by paying dividends upon the paid-up capital stock at a rate not exceeding eight percent per annum. They may set aside reasonable reserves out of such net earnings for any association purpose. The trustees may, however, distribute all or any portion of the net earnings to stockholders in proportion to the business of each with the association: *Provided*, That they may include nonstockholders at a rate not exceeding that paid to stockholders: *Provided further*, That the trustees may distribute, on a patronage basis, such net earnings at different rates on different classes, kinds, or varieties of products handled. All dividends declared or other distributions made under this section may, in the discretion of the trustees, be in the form of capital stock or other capital or equity certificates of the association. All unclaimed dividends or distributions authorized under this chapter or funds payable on redeemed stock or equity certificates shall revert to the association at the discretion of the trustees at any time after one year from the end of the fiscal year during which such distributions or redemptions have been declared. [1947 c 37 § 1; 1943 c 99 § 3; 1913 c 19 § 13; Rem. Supp. 1947 § 3916. Formerly RCW 23.56.160.]

**23.86.170 Distribution of dividends.** The profits or net earnings of such association shall be distributed to those entitled thereto at such time and in such manner not inconsistent with this chapter as its bylaws shall prescribe, which shall be as often as once a year. [1913 c 19 § 14; RRS § 3917. Formerly RCW 23.56.170.]

**23.86.180 Annual reports—Contents—Filing.** Every association organized under the terms of this chapter shall, annually on or before the first day of March of each year, make a report to the secretary of state; such report shall contain the name of the company, its principal place of business in this state and a general statement as to its business, showing the total amount of business transacted, the amount of capital stock subscribed for and paid in, the number of stockholders, the total expenses of operation, the amount of its indebtedness or liability and its profits and losses. [1913 c 19 § 15; RRS § 3918. Formerly RCW 23.56.180.]

**23.86.190 Cooperative associations under former laws.** All cooperative associations heretofore organized and doing business under prior statutes, or which have attempted to so organize and do business shall have the benefit of all the provisions of this chapter and be bound thereby on filing with the secretary of state signed and sworn to by the president and secretary, manager or other officer managing said business, to the effect that said cooperative company or association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by the provisions of this chapter. No association organized under this chapter shall be required to do or perform anything not specifically required herein in order to become an association or to continue its business as such. [1913 c 19 § 16; RRS § 3919. Formerly RCW 23.56.190.]

**23.86.200 Definitions.** For the purposes of RCW 23.86.200 through 23.86.230 a "domestic" cooperative association or "domestic" corporation is one formed under the laws of this state, and an "ordinary business" corporation is one formed or which could be formed under Title 23A RCW. [1971 ex.s. c 221 § 1.]

**23.86.210 Conversion of cooperative association to domestic ordinary business corporation—Procedure.** (1) A cooperative association may be converted to a domestic ordinary business corporation pursuant to the following procedures:

(a) The board of trustees of the association shall, by affirmative vote of not less than two-thirds of all such trustees, adopt a plan for such conversion setting forth:

(i) The reasons why such conversion is desirable and in the interests of the members of the association;

(ii) The proposed contents of articles of conversion with respect to items (ii) through (ix) of subparagraph (c) below; and

(iii) Such other information and matters as the board of trustees may deem to be pertinent to the proposed plan.

(b) After adoption by the board of trustees, the plan for conversion shall be submitted for approval or rejection to the members of the association at a special meeting of such members duly called and held. The notice of the meeting shall be accompanied by a full copy of the proposed plan for conversion or by a summary of its provisions. Members shall have the right to vote upon the proposal in person, or by written proxy, or by mail. If not less than two-thirds of all of the members of the association vote in favor thereof, the plan for conversion shall thereby be approved.

(c) Upon approval by the members of the association, the articles of conversion shall be executed in triplicate by the association by its president and by its secretary and verified by one of its officers and shall set forth:

(i) The dates and vote by which the plan for conversion was adopted by the board of trustees and members respectively;

(ii) The corporate name of the converted organization. The name shall comply with requirements for names of business corporations formed under Title 23A RCW, and shall not contain the term "cooperative";

(iii) The purpose or purposes for which the converted corporation is to exist;

(iv) The duration of the converted corporation;

(v) The capitalization of the converted corporation and the class or classes of shares of stock into which divided, together with the par value, if any, of such shares, in accordance with statutory requirements applicable to ordinary business corporations, and the basis upon which outstanding shares of the association are converted into shares of the converted corporation;

(vi) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the converted corporation;

(vii) The address of the converted corporation's initial registered office and its initial registered agent at such address;

(viii) The names and addresses of the persons who are to serve as directors of the converted corporation until the first annual meeting of shareholders of the converted corporation or until their successors are elected and qualify;

(ix) Any additional provisions, not inconsistent with law, provided for by the plan for conversion for the regulation of the internal affairs of the converted corporation, including any provision restricting the transfer of shares or which under Title 23A RCW is required or permitted to be set forth in bylaws.

(d) The executed triplicate originals of the articles of conversion shall be delivered to the secretary of state. If the secretary of state finds that the articles of conversion conform to law, he shall, when all the fees have been paid as in this section prescribed:

(i) Endorse on each of such originals the word "Filed", and the month, day and year of such filing;

(ii) File one of such originals in his office; and

(iii) Issue a certificate of conversion to which he shall affix one of such originals.

The certificate of conversion together with the original of the articles of conversion affixed thereto by the secretary of state, and the other remaining original shall be

returned to the converted corporation. The remaining original shall be filed in the office of the county auditor of the county in which the converted corporation's registered office is situated. The original affixed to the certificate of conversion shall be retained by the converted corporation.

(e) Upon filing the articles of conversion the converted corporation shall pay, and the secretary of state and county auditor shall collect, the same filing and license fees as for filing with them respectively of articles of incorporation of a newly formed business corporation similarly capitalized.

(2) Upon issuance by the secretary of state of the certificate of conversion, the conversion of the cooperative association to an ordinary business corporation shall become effective; the articles of conversion shall thereafter constitute and be treated in like manner as articles of incorporation; and the converted corporation shall be subject to all laws applicable to corporations formed under Title 23A RCW, and shall not thereafter be subject to laws applying only to cooperative associations. The converted corporation shall constitute and be deemed to constitute a continuation of the corporate substance of the cooperative association and the conversion shall in no way derogate from the rights of creditors of the former association.

(3) A member of the cooperative association who dissents from the plan for conversion shall have the same right of dissent and payment and in accordance with the same applicable procedures, as are provided for dissenting shareholders with respect to merger of ordinary business corporations under chapter 23A.24 RCW. [1971 ex.s. c 221 § 2.]

**23.86.220 Merger of cooperative association with one or more cooperative associations or business corporations—Procedure.** (1) A cooperative association may merge with one or more domestic cooperative associations, or with one or more domestic ordinary business corporations, in accordance with the procedures and subject to the conditions set forth or referred to in this section.

(2) If the merger is into another domestic cooperative association, the board of trustees of each of the associations shall approve by vote of not less than two-thirds of all the trustees, a plan of merger setting forth:

(a) The names of the associations proposing to merge;

(b) The name of the association which is to be the surviving association in the merger;

(c) The terms and conditions of the proposed merger;

(d) The manner and basis of converting the shares of each merging association into shares or other securities or obligations of the surviving association;

(e) A statement of any changes in the articles of association of the surviving association to be effected by such merger; and

(f) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

(3) Following approval by the boards of trustees, the plan of merger shall be submitted to a vote of the members of each of the associations at special meetings of the

members called for the purpose. The notice of the meeting shall be in writing stating the purpose or purposes of the meeting and include or be accompanied by a copy or summary of the plan of merger. At the meeting members may vote upon the proposed merger in person, or by proxy, or by mailed ballot. The affirmative vote of not less than two-thirds of all of the members of the association shall be required for approval of the plan of merger.

(4) Upon approval by the members of the associations proposing to merge, articles of merger shall be executed in triplicate by each association by its president and by its secretary and verified by one of the officers of each association signing such articles, and shall set forth:

(a) The plan of merger;

(b) As to each association, the number of members and number of shares outstanding; and

(c) As to each association, the number of members who voted for and against such plan, respectively.

(5) Triplicate originals of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this section prescribed:

(a) Endorse on each of such originals the word "Filed", and the month, day and year of such filing;

(b) File one of such originals in his office; and

(c) Issue a certificate of merger to which he shall affix one of such originals.

(6) The certificate of merger, together with the duplicate original of the articles of merger affixed thereto by the secretary of state, and the other remaining original, shall be returned to the surviving association or its representative. Such remaining original shall then be filed in the office of the county auditor of the county in which the principal place of business of the surviving association is located. If the principal place of business of the merged association has been located in a different county from that of the surviving association, a copy of the articles of merger, certified by the secretary of state, shall likewise be filed with the county auditor of such different county.

(7) For filing articles of merger hereunder the secretary of state and county auditor shall charge and collect the same fees, respectively, as apply to filing of articles of merger of ordinary business corporations.

(8) If the plan of merger is for merger of the cooperative association into a domestic ordinary business corporation, the association shall follow the same procedures as hereinabove provided for merger of domestic cooperative associations and the ordinary business corporation shall follow the applicable procedures set forth in chapter 23A.20 RCW.

(9) At any time prior to filing of the articles of merger, the merger may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger.

(10) A member of a cooperative association, or shareholder of the ordinary business corporation, who dissents from the plan of merger shall have the same right of dissent and payment and in accordance with the same applicable procedures, as are provided for dissenting shareholders with respect to merger of ordinary business

corporations under chapter 23A.24 RCW. [1971 ex.s. c 221 § 3.]

**23.86.230 Merger of cooperative association with one or more cooperative associations or business corporations—Rights, powers, duties and liabilities of surviving entity—Articles.** (1) Upon issuance of the certificate of merger by the secretary of state, the merger of the cooperative association into another cooperative association or ordinary business corporation, as the case may be, shall be effected.

(2) When merger has been effected:

(a) The several parties to the plan of merger shall be a single cooperative association or corporation, as the case may be, which shall be that cooperative association or corporation designated in the plan of merger as the survivor.

(b) The separate existence of all parties to the plan of merger, except that of the surviving cooperative association or corporation, shall cease.

(c) If the surviving entity is a cooperative association, it shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a cooperative association organized under chapter 23.86 RCW. If the surviving entity is an ordinary business corporation, it shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized or existing under Title 23A RCW.

(d) Such surviving cooperative association or corporation, as the case may be, shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, both public and private of each of the merging organizations, to the extent that such rights, privileges, immunities, and franchises are not inconsistent with the corporate nature of the surviving organization; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest of or belonging to or due to each of the organizations so merged shall be taken and deemed to be transferred to and vested in such surviving cooperative association or corporation, as the case may be, without further act or deed; and the title to any real estate, or any interest therein, vested in any such merged cooperative association shall not revert or be in any way impaired by reason of such merger.

(3) The surviving cooperative association or corporation, as the case may be, shall, after the merger is effected, be responsible and liable for all the liabilities and obligations of each of the organizations so merged; and any claim existing or action or proceeding pending by or against any of such organizations may be prosecuted as if the merger had not taken place and the surviving cooperative association or corporation may be substituted in its place. Neither the right of creditors nor any liens upon the property of any cooperative association or corporation party to the merger shall be impaired by the merger.

(4) The articles of association of the surviving cooperative association or the articles of incorporation of the surviving ordinary business corporation, as the case may

be, shall be deemed to be amended to the extent, if any, that changes in such articles are stated in the plan of merger. [1971 ex.s. c 221 § 4.]

**Chapter 23.90**  
**MASSACHUSETTS TRUSTS**

**Sections**

23.90.010	Short title.
23.90.020	Massachusetts trust defined.
23.90.030	Form of association authorized.
23.90.040	Filing trust instrument, effect—Powers and duties of trust.
23.90.900	Severability—1959 c 220.

**23.90.010 Short title.** This chapter may be known and cited as the "Massachusetts Trust Act of 1959" [1959 c 220 § 1.]

**23.90.020 Massachusetts trust defined.** A Massachusetts trust is an unincorporated business association created at common law by an instrument under which property is held and managed by trustees for the benefit and profit of such persons as may be or may become the holders of transferable certificates evidencing beneficial interests in the trust estate, the holders of which certificates are entitled to the same limitation of personal liability extended to stockholders of private corporations. [1959 c 220 § 2.]

**23.90.030 Form of association authorized.** A Massachusetts trust is permitted as a recognized form of association for the conduct of business within the state of Washington. [1959 c 220 § 3.]

**23.90.040 Filing trust instrument, effect—Powers and duties of trust.** (1) Any Massachusetts trust desiring to do business in this state shall file with the secretary of state a verified copy of the trust instrument creating such a trust and any amendment thereto, the assumed business name, if any, and the names and addresses of its trustees; and it shall also file true copies of the foregoing with the county auditor in the county in which it has its principal place of business in this state, and also in any county in which it owns any real property.

(2) Any person dealing with such Massachusetts trust shall be bound by the terms and conditions of the trust instrument and any amendments thereto so filed.

(3) Any Massachusetts trust created under this chapter or entering this state pursuant thereto shall pay such taxes and fees as are imposed by the laws, ordinances, and resolutions of the state of Washington and any counties and municipalities thereof on domestic and foreign corporations, respectively, on an identical basis therewith. In computing such taxes and fees, the shares of beneficial interest of such a trust shall have the character for tax purposes of shares of stock in private corporations.

(4) Any Massachusetts trust shall be subject to such applicable provisions of law, now or hereafter enacted, with respect to domestic and foreign corporations, respectively, as relate to the issuance of securities, filing of required statements or reports, service of process,

general grants of power to act, right to sue and be sued, limitation of individual liability of shareholders, rights to acquire, mortgage, sell, lease, operate and otherwise to deal in real and personal property, and other applicable rights and duties existing under the common law and statutes of this state in a manner similar to those applicable to domestic and foreign corporations.

(5) The secretary of state, director of motor vehicles, and the department of revenue of the state of Washington, and the several county auditors in which any such Massachusetts trust shall have its principal place of business or own any real property are each authorized and directed to prescribe binding rules and regulations applicable to said Massachusetts trusts consistent with this chapter. [1967 ex.s. c 26 § 21; 1959 c 220 § 4.]

**Effective date—1967 ex.s. c 26:** The effective date of the 1967 amendment to this section is July 1, 1967, see note following RCW 82.01.050.

**Purpose—Savings—1967 ex.s. c 26:** See notes following RCW 82.01.050.

**23.90.900 Severability—1959 c 220.** Notwithstanding any other evidence of legislative intent, it is declared to be the controlling legislative intent that if any provision of this chapter, or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby. [1959 c 220 § 5.]

# TITLE 23A

## WASHINGTON BUSINESS CORPORATION ACT

### Chapters

**23A.04** Definitions.  
**23A.08** Substantive provisions.  
**23A.12** Formation of corporations.  
**23A.16** Amendment.  
**23A.20** Merger and consolidation.  
**23A.24** Sale of assets.  
**23A.28** Dissolution.  
**23A.32** Foreign corporations.  
**23A.36** Nonadmitted organizations.  
**23A.40** Fees and charges.  
**23A.44** Miscellaneous provisions.  
**23A.98** Construction.

**Reviser's note:** (1) Section 1 of the act enacting the Washington Business Corporation Act [1965 c 53] provides: "There is added to Title 23 RCW a new chapter to read as set forth in sections 2 through 167 of this act." Pursuant to authority granted by RCW 1.08.015(3) and for the purpose therein specified, i.e. "..... to effectuate the orderly and logical arrangement of the statutes", a new title (Title 23A RCW) is hereby created for the codification of 1965 c 53.

(2) The phrase "this act" and similar phrases appearing in 1965 c 53 have been translated to read "this title". All sections of 1965 c 53 are codified herein with the exception of section 1 noted above and section 168 which amends RCW 4.12.025.

**Acknowledgment form, corporations:** RCW 64.08.070.

**Acquisition of corporate stock by another corporation to lessen competition declared unlawful—Exceptions—Judicial order to divest:** RCW 19.86.060.

**Actions by and against public corporations:** RCW 4.08.110, 4.08.120.

**Alien land law:** Chapter 64.16 RCW.

**Attachment:** Chapter 7.12 RCW.

**Banks and trust companies:** Title 30 RCW.

**Blue sky law:** Chapter 21.20 RCW.

**Boom companies:** Chapter 76.28 RCW.

**Bulk sales law:** Article 62A.6 RCW.

**Businesses and professions, generally:** Titles 18 and 19 RCW.

**Cemeteries:** Chapters 68.20, 68.24 RCW.

**Charitable trusts:** Chapter 19.10 RCW.

**Commerce and economic development:** Chapter 43.31 RCW.

**Constitutional provisions, generally:** State Constitution Art. 12.

**Contributions by banks, etc.:** RCW 30.04.340–30.04.360.

**Corporations for educational, social, religious, fraternal, etc., purposes:** Title 24 RCW.

**Corporations organized by units of state militia:** RCW 38.40.130.

**Corrupting employees:** Chapter 49.44 RCW.

**Credit unions:** Chapter 31.12 RCW.

**Crimes relating to corporations:** Chapter 9.24 RCW.

**Criminal procedure:** RCW 10.01.070–10.01.100.

**Crop credit associations:** Chapter 31.16 RCW.

**Dentistry, practice or solicitation prohibited:** RCW 18.32.310.

**Dissolution, forfeiture of corporate franchise for violation of consumer protection act:** RCW 19.86.150.

**Doing business without license, gross misdemeanor:** RCW 9.24.040.

**Drivers' training schools:** Chapter 46.82 RCW.

**Eminent domain by corporations:** Chapter 8.20 RCW.

**Executions, supplemental proceedings, service of orders:** RCW 6.32.130.

**Farm marketing associations:** Chapter 24.32 RCW.

**Federal bonds and notes as investment or collateral:** Chapter 39.60 RCW.

**Fee of federal water users' association:** RCW 90.40.070.

**Fees for filing:** RCW 43.07.120.

**Foreign corporations not to be favored as against domestics:** State Constitution Art. 12 § 7.

**Forgery:** RCW 9A.60.020.

**Fraud in stock subscription:** RCW 9.24.010.

**Fraudulent issue of stock:** RCW 9.24.020.

**Game farmers, corporate application:** RCW 77.28.040.

**Graft by employees:** Chapter 49.44 RCW.

**Humane societies:** Chapter 16.52 RCW.

**Industrial loan companies:** Chapter 31.04 RCW.

**Inheritance tax on stock:** RCW 83.44.030.

**Insurance companies, generally:** Title 48 RCW.

**Insurance companies, organization:** Chapter 48.06 RCW.

**Insurance company dividends to stockholders:** RCW 48.08.030.

**Judgment by confession:** RCW 4.60.020.

**Legal advertising, penalty:** RCW 30.04.260.

**Liability of stockholders:** State Constitution Art. 12 § 4.

**Libel, slander:** Chapter 9.58 RCW.

**Limitations on issuance of securities, increase of stock:** State Constitution Art. 12 § 6.

**Loan agencies, miscellaneous:** Title 31 RCW.

**Log driving companies:** Chapter 76.32 RCW.

**Mandamus proceedings:** Chapter 7.16 RCW.

**Mining corporation:** Chapter 78.04 RCW.

**Monopolies, trusts prohibited:** State Constitution Art. 12 § 22.

**Mutual savings banks:** Title 32 RCW.

**Negotiable instruments:** Article 62A.3 RCW.

**Notary public, powers as to banks and corporations:** RCW 42.28.050.

**Partnerships:** Title 25 RCW.

**"Person" defined:** RCW 1.16.080, 4.20.005, 4.28.340, 7.24.130, 8.12-.020, 9A.04.110.

**Photostatic, photographic copies of business records as evidence:** RCW 40.20.030.

**Pipe line corporations:** Chapter 81.88 RCW.

**Pleadings, subscription and verification:** RCW 4.36.010.

**Powers of appointment:** Chapter 64.24 RCW.

**Professional service corporations:** Chapter 18.100 RCW.

**Progress and industry development:** Chapter 43.21 RCW.

**Prohibition proceedings:** Chapter 7.16 RCW.

**Public utilities:** Title 80 RCW.

**Quo warranto:** Chapter 7.56 RCW.

**Railroads:** Chapter 81.36 RCW.

**Real estate brokers:** Chapter 18.85 RCW.

**Receivers:** Chapter 7.60 RCW; **Rules of court:** CR 66.

**Savings and loan associations:** Title 33 RCW.

**Seals, effect of:** RCW 64.04.105.

**Secretary of state, duties:** Chapter 43.07 RCW.

**Securities and investments:** Title 21 RCW.

**Small loan companies:** Chapter 31.08 RCW.



*State shall not subscribe for stock or loan credit: State Constitution Art. 12 § 9.*

*Street railways: Chapter 81.64 RCW.*

*Summons, how served: RCW 4.28.080, 4.28.081, 4.28.090, 4.28.100.*

*The Washington Principal and Income Act: Chapter 11.104 RCW.*

*Toll logging roads: Chapter 76.24 RCW.*

*Trade name exemption: RCW 19.80.020.*

*Trustees' accounting act: Chapter 30.30 RCW.*

*Trusts for employee benefits, duration: Chapter 49.64 RCW.*

*Uniform act for simplification of fiduciary security transfers: Chapter 21.17 RCW.*

*Uniform business records as evidence act: Chapter 5.45 RCW.*

*Uniform disposition of unclaimed personal property: Chapter 63.28 RCW.*

*Uniform gifts to minors act: Chapter 21.24 RCW.*

*Uniform photographic copies of business and public records as evidence act: Chapter 5.46 RCW.*

*Venue in action against: Rules of court: CR 82; RCW 4.12.025.*

*Warehousing and deposits: Titles 22 and 62A RCW.*

### Chapter 23A.04 DEFINITIONS

#### Sections

#### 23A.04.010 Definitions.

**23A.04.010 Definitions.** As used in this title, unless the context otherwise requires, the term:

(1) "Corporation" or "domestic corporation" means a corporation for profit organized for a purpose for which a corporation may be organized under the provisions of this title, except a foreign corporation.

(2) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under this title.

(3) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger.

(4) "Shares" means the units into which the proprietary interests in a corporation are divided.

(5) "Subscriber" means one who subscribes for one or more shares in a corporation, whether before or after incorporation.

(6) "Shareholder" means one who is a holder of record of one or more shares in a corporation, except as provided by RCW 23A.12.040.

(7) "Authorized shares" means the shares of all classes which the corporation is authorized to issue.

(8) "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been canceled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares but not "outstanding" shares.

(9) "Net assets" means the amount by which the total assets of a corporation, excluding treasury shares, exceed the total debts of the corporation.

(10) "Stated capital" means, at any particular time, the sum of (a) the par value of all shares of the corporation having a par value that have been issued, (b) the amount of the consideration received by the corporation

for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law, and (c) such amounts not included in clauses (a) and (b) of this paragraph as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation shall be determined on the same basis and in the same manner as the stated capital of a domestic corporation, for the purpose of computing fees and other charges imposed by this title.

(11) "Surplus" means the excess of the net assets of a corporation over its stated capital.

(12) "Earned surplus" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Earned surplus shall include also any portion of surplus allocated to earned surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.

(13) "Capital surplus" means the entire surplus of a corporation other than its earned surplus.

(14) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.

(15) For the purposes of RCW 23A.40.040, 23A.40.050, 23A.40.060, and 23A.40.130 the term or terms:

(a) "Stock" means shares.

(b) "Capital" and "capital stock" and "authorized capital stock" mean the sum of (i) the par value of all shares of the corporation having a par value that the corporation is authorized to issue, and (ii) the amount expected to be allocated to stated capital out of the amount of the consideration expected to be received by the corporation in return for the issuance of all the shares without par value which the corporation is authorized to issue.

(c) "Capitalization" means stated capital.

(d) "Value of the assets received and to be received by such corporation in return for the issuance of its nonpar value stock" and "value of the assets represented by nonpar shares" mean the amount expected to be allocated to stated capital out of the amount of consideration expected to be received by the corporation in return for the issuance of all the shares without par value which the corporation is authorized to issue.

(e) "Value of the assets received in consideration of the issuance of such nonpar value stock" means the stated capital represented by the nonpar value shares issued by the corporation.

(f) "The number of shares of capital stock of the company" means the number of shares of the corporation. [1965 c 53 § 3.]

### Chapter 23A.08 SUBSTANTIVE PROVISIONS

#### Sections

- 23A.08.010 Purposes.
- 23A.08.020 General powers.
- 23A.08.025 Indemnification of directors, trustees, officers, employees or agents authorized—Insurance.
- 23A.08.026 Indemnification of directors, trustees, officers, employees or agents authorized—Application of RCW 23A.08.025.
- 23A.08.030 Right of corporation to acquire and dispose of its own shares.
- 23A.08.040 Defense of ultra vires.
- 23A.08.050 Corporate name.
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**23A.08.010 Purposes.** Corporations may be organized under this title for any lawful purpose or purposes, except for the purpose of banking or engaging in business as an insurer, and except:

(1) Where special provision is made by law for the preparation, contents and filing of articles of incorporation of designated classes of corporations, such corporations shall be formed under such special provisions, and not hereunder.

(2) Any business, the conduct of which at the time of the passage of this title is forbidden to corporations by the Constitution, statutes or common law of this state. [1965 c 53 § 4.]

**23A.08.020 General powers.** Each corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(4) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(6) To lend money to its employees other than its officers and directors, and otherwise assist its employees, officers and directors.

(7) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

(8) To make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

(9) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(10) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this title in any state, territory, district, or possession of the United States, or in any foreign country.

(11) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

(12) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

(13) To make donations for the public welfare or for charitable, scientific or educational purposes; and in time of war to make donations in aid of war activities.

(14) In time of war to transact any lawful business in aid of the United States in the prosecution of the war.

(15) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans and other incentive plans for any or all of its directors, officers and employees.

(16) To cease its corporate activities and surrender its corporate franchise.

(17) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized. [1969 ex.s. c 58 § 1; 1965 c 53 § 5.]

**23A.08.025 Indemnification of directors, trustees, officers, employees or agents authorized—Insurance.**

(1) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, trustee, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(2) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, trustee, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including

attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application, that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(3) To the extent that a director, trustee, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (1) and (2), or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(4) Any indemnification under subsections (1) and (2) above (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, trustee, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsections (1) and (2) above. Such determination shall be made (a) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such a quorum is not obtainable, or even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (c) by the shareholders.

(5) Expenses incurred in defending a civil or criminal action suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized in the manner provided in subsection (4) upon receipt of an undertaking by or on behalf of the director, trustee, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this section.

(6) The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, trustee, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(7) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, trustee, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, trustee, officer, employee or agent of another corporation, partnership, joint venture,

trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section. [1969 ex.s. c 58 § 2.]

**23A.08.026 Indemnification of directors, trustees, officers, employees or agents authorized—Application of RCW 23A.08.025.** The provisions of RCW 23A.08.025 shall apply to any corporation, other than a municipal corporation, incorporated under any of the laws of the state of Washington. [1969 ex.s. c 58 § 3.]

**23A.08.030 Right of corporation to acquire and dispose of its own shares.** A corporation shall have the right to purchase, take, receive or otherwise acquire, hold, own, pledge, transfer or otherwise dispose of its own shares, but purchases of its own shares, whether direct or indirect, shall be made only to the extent of unreserved and unrestricted earned surplus available therefor, and, if the articles of incorporation so permit or with the affirmative vote of the holders of at least a majority of all shares entitled to vote thereon, to the extent of unreserved and unrestricted capital surplus available therefor: *Provided*, That a Regulated Investment Company registered under the Investment Company Act of 1940, or any similar federal statute, shall have the right to purchase its own shares out of unreserved and unrestricted capital surplus whether or not the articles of incorporation so provide and without prior shareholder approval.

To the extent that earned surplus or capital surplus is used as the measure of the corporation's right to purchase its own shares, such surplus shall be restricted so long as such shares are held as treasury shares, and upon the disposition or cancellation of any such shares the restriction shall be removed pro tanto.

Notwithstanding the foregoing limitation, a corporation may purchase or otherwise acquire its own shares for the purpose of:

- (1) Eliminating fractional shares.
- (2) Collecting or compromising indebtedness to the corporation.
- (3) Paying dissenting shareholders entitled to payment for their shares under the provisions of this title.
- (4) Effecting, subject to the other provisions of this title, the retirement of its redeemable shares by redemption or by purchase at not to exceed the redemption price.

No purchase of or payment for its own shares shall be made at a time when the corporation is insolvent or when such purchase or payment would make it insolvent. [1971 ex.s. c 38 § 1; 1967 c 190 § 8; 1965 c 53 § 6.]

**23A.08.040 Defense of ultra vires.** No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) In a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation.

(3) In a proceeding by the attorney general, as provided in this title, to dissolve the corporation, or in a proceeding by the attorney general to enjoin the corporation from the transaction of unauthorized business. [1965 c 53 § 7.]

**23A.08.050 Corporate name.** (1) The corporate name:

(a) Shall contain the word "corporation," "company," "incorporated," or "limited," or shall contain an abbreviation of one of such words, or such corporation shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof.

(b) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance.

(c) Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this title, or the name of a corporation which has in effect a registration of its corporate name as provided in this title, unless

(i) such other domestic or foreign corporation is about to change its name, or to cease to do business, or is being wound up, or such foreign corporation is about to withdraw from doing business in this state, and

(ii) the written consent of such other domestic or foreign corporation to the adoption of its name or a deceptively similar name has been given and is filed with the articles of incorporation, provided, a deceptively similar name shall not be used if the secretary of state finds that the use of such name shall be against public interest.

(2) No corporation formed under this chapter shall include in its corporate name any of the following words or phrases: "Bank," "banking," "banker," "trust,"

"cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more words "building," "savings," "loan," "home," "association," "society," "room," "lounge" or any other words or phrases prohibited by any statute of this state.

(3) The assumption of a name in violation of this section shall not affect or vitiate the corporate existence, but the courts of this state, having equity jurisdiction, may, upon the application of the state, or of any person, unincorporated association, or corporation interested or affected, enjoin such corporation from doing business under a name assumed in violation of this section, although its articles of incorporation may have been approved and a certificate of incorporation issued. [1965 c 53 § 8.]

**23A.08.060 Reserved name.** The exclusive right to the use of a corporate name may be reserved by:

(1) Any person intending to organize a corporation under this title.

(2) Any domestic corporation intending to change its name.

(3) Any foreign corporation intending to make application for a certificate of authority to transact business in this state.

(4) Any foreign corporation authorized to transact business in this state and intending to change its name.

(5) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this state.

The reservation shall be made by filing with the secretary of state an application to reserve a specified corporate name, executed by the applicant. If the secretary of state finds that the name is available for corporate use, he shall reserve the same for the exclusive use of the applicant for a period of one hundred and eighty days. Such reservation shall be limited to one filing and shall not be renewable.

The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state, a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee. [1969 ex.s. c 83 § 1; 1965 c 53 § 9.]

**23A.08.070 Registered name.** Any corporation, organized and existing under the laws of any state or territory of the United States may register its corporate name under this title, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state, or the name of any foreign corporation authorized to transact business in this state, or any corporate name reserved or registered under this title.

Such registration shall be made by:

(1) Filing with the secretary of state (a) an application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it

is carrying on or doing business, and a brief statement of the business in which it is engaged, and (b) a certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the secretary of state of such state or territory or by such other official as may have custody of the records pertaining to corporations, and

(2) Paying to the secretary of state a registration fee in the amount of one dollar for each month, or fraction thereof, between the date of filing such application and December thirty-first of the calendar year in which such application is filed.

Such registration shall be effective until the close of the calendar year in which the application for registration is filed. [1965 c 53 § 10.]

**23A.08.080 Renewal of registered name.** A corporation which has in effect a registration of its corporate name, may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of ten dollars. A renewal application may be filed between the first day of October and the thirty-first day of December in each year, and shall extend the registration for the following calendar year. [1965 c 53 § 11.]

**23A.08.090 Registered office and registered agent.** Each corporation shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as its place of business.

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office. [1965 c 53 § 12.]

*Involuntary dissolution—Failure to appoint and maintain a registered office or registered agent: RCW 23A.28.130.*

*Registered office and registered agent of foreign corporation: RCW 23A.32.080.*

**23A.08.100 Change of registered office or registered agent.** A corporation may change its registered office or change its registered agent or both, by executing and filing in the manner hereinafter provided a statement setting forth:

(1) The name of the corporation.

(2) The address of its then registered office.

(3) If the address of its registered office be changed, the address to which the registered office is to be changed.

(4) The name of its then registered agent.

(5) If its registered agent be changed, the name of its successor registered agent.

(6) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

(7) That such change was authorized by resolution duly adopted by its board of directors.

(8) The date such change is to become effective.

Such statement shall be executed in triplicate by the corporation by its president or a vice-president, and verified by him and delivered to the secretary of state on or before the date such change is to become effective. If the secretary of state finds that such statement conforms to the provisions of this title he shall endorse on each of such triplicate originals the word "Filed," and the month, day and year of the filing thereof, file one original in his office, and return the other two originals to the corporation or its representative.

On or before the day when such change is to become effective an original of such statement shall be filed with the auditor of the county in which the registered office is then located, and, if the registered office is to be moved to another county, an original of such statement, together with a certified copy of the corporation's articles of incorporation and all amendments thereto, shall also be filed with the auditor of such other county.

Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in triplicate, with the secretary of state, who shall forthwith mail one copy thereof to the auditor of the county in which the registered office is then located, and one copy to the corporation at its registered office. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state. [1967 c 190 § 1; 1965 c 53 § 13.]

*Change of registered office or registered agent of foreign corporation: RCW 23A.32.090.*

*Involuntary dissolution—Failure to file statement of change of registered office or registered agent: RCW 23A.28.130.*

**23A.08.110 Service of process on corporation.** The registered agent so appointed by a corporation shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a corporation shall fail to appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by certified mail, addressed to the corporation at its registered office. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any

other manner now or hereafter permitted by law. [1967 c 190 § 2; 1965 c 53 § 14.]

**23A.08.120 Authorized shares.** Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this title.

Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(1) Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof.

(2) Entitling the holders thereof to cumulative, non-cumulative or partially cumulative dividends.

(3) Having preference over any other class or classes of shares as to the payment of dividends.

(4) Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation.

(5) Convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation, but shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted. [1965 c 53 § 15.]

**23A.08.130 Issuance of shares of preferred or special classes in series.** (1) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

(a) The rate of dividend.

(b) Whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption.

(c) The amount payable upon shares in event of voluntary and involuntary liquidation.

(d) Sinking fund provisions, if any, for the redemption or purchase of shares.

(e) The terms and conditions, if any, on which shares may be converted.

(f) Voting rights, if any.

(2) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

(3) In order for the board of directors to establish a series, where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as shall not be fixed and determined by the articles of incorporation.

(4) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file and execute in the manner hereinafter provided a statement setting forth:

(a) The name of the corporation.

(b) A copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof.

(c) The date of adoption of such resolution.

(d) That such resolution was duly adopted by the board of directors.

(5) Such statement shall be executed in triplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this title prescribed:

(a) Endorse on each of such triplicate originals the word "Filed," and the month, day, and year of the filing thereof.

(b) File one of such originals in his office.

(c) Return the other two such originals to the corporation or its representative.

(6) One of such other originals shall then be filed in the office of the auditor of the county in which the registered office of the corporation is located and the other shall be retained by the corporation.

(7) Upon the filing of such statement by the secretary of state, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation. [1975 1st ex.s. c 264 § 5; 1965 c 53 § 16.]

**23A.08.135 Creation and issuance of rights or options to purchase shares from the corporation.** Subject to any provisions in respect thereof set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from

the corporation shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which and the price or prices at which such shares may be purchased from the corporation upon the exercise of any such right or option. If such rights or options are to be issued to directors, officers or employees as such of the corporation or of any subsidiary thereof, and not to the shareholders generally, their issuance shall be approved by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or shall be authorized by and consistent with a plan approved or ratified by such a vote of shareholders. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive. The price or prices to be received for any shares having a par value, other than treasury shares to be issued upon the exercise of such rights or options, shall not be less than the par value thereof. [1971 ex.s. c 38 § 5.]

**23A.08.140 Subscription for shares.** A subscription for shares of a corporation to be organized shall be in writing and be irrevocable for a period of six months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription.

Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of twenty days after written demand has been made therefor. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post office address known to the corporation, with postage thereon prepaid. In the event of a sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal representative. [1965 c 53 § 17.]

**23A.08.150 Consideration for shares.** Shares having a par value may be issued for such consideration expressed in dollars, not less than the par value thereof,



as shall be fixed from time to time by the board of directors.

Shares without par value may be issued for such consideration expressed in dollars as may be fixed from time to time by the board of directors unless the articles of incorporation reserve to the shareholders the right to fix the consideration. In the event that such right be reserved as to any shares, the shareholders shall, prior to the issuance of such shares, fix the consideration to be received for such shares, by a vote of the holders of a majority of all shares entitled to vote thereon.

Treasury shares may be disposed of by the corporation for such consideration expressed in dollars as may be fixed from time to time by the board of directors.

That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares.

In the event of a conversion of shares, or in the event of an exchange of shares with or without par value for the same or a different number of shares with or without par value, whether of the same or a different class or classes, the consideration for the shares so issued in exchange or conversion shall be deemed to be (1) the stated capital then represented by the shares so exchanged or converted, (2) that part of surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted, and (3) any additional consideration paid to the corporation upon the issuance of shares for the shares so exchanged or converted. [1965 c 53 § 18.]

**23A.08.160 Payment for shares.** The consideration for the issuance of shares may be paid in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be deemed to be fully paid and nonassessable.

Neither promissory notes nor future services shall constitute payment or part payment, for shares of a corporation.

In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive. [1965 c 53 § 19.]

**23A.08.170 Determination of amount of stated capital.** In case of the issuance by a corporation of shares having par value, the consideration received therefor shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute capital surplus.

In case of the issuance by a corporation of shares without par value, the entire consideration received therefor shall constitute stated capital unless the corporation shall determine as provided in this section that only a part thereof shall be stated capital. Within a period of sixty days after the issuance of any shares without par value, the board of directors may allocate to capital surplus any portion of the consideration received

for the issuance of such shares. No such allocation shall be made of any portion of the consideration received for shares without par value having a preference in the assets of the corporation in the event of involuntary liquidation except the amount, if any, of such consideration in excess of such preference.

If shares have been or shall be issued by a corporation in merger or consolidation or in acquisition of all or substantially all of the outstanding shares or of the property and assets of another corporation, whether domestic or foreign, any amount that would otherwise constitute capital surplus under the foregoing provisions of this section may instead be allocated to earned surplus by the board of directors of the issuing corporation except that its aggregate earned surplus shall not exceed the sum of the earned surpluses as defined in this title of the issuing corporation and of all other corporations, domestic or foreign, that were merged or consolidated or of which the shares or assets were acquired.

The stated capital of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares. [1965 c 53 § 20.]

*Statement of value of nonpar stock—Revaluation—Appeal: RCW 23A.40.050.*

**23A.08.180 Expenses of organization, reorganization and financing.** The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid or assessable. [1965 c 53 § 21.]

**23A.08.190 Certificates representing shares.** The shares of a corporation shall be represented by certificates signed by the president or a vice president and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the president or vice president and the secretary or assistant secretary upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issue.

Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of the shares of each class

authorized to be issued and, if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

Each certificate representing shares shall state upon the face thereof:

(1) That the corporation is organized under the laws of this state.

(2) The name of the person to whom issued.

(3) The number and class of shares, and the designation of the series, if any, which such certificate represents.

(4) The par value of each share represented by such certificate, or a statement that the shares are without par value.

No certificate shall be issued for any share until such share is fully paid. [1965 c 53 § 22.]

**23A.08.200 Issuance of fractional shares or scrip.** A corporation may, but shall not be obliged to, issue a certificate for a fractional share, and, by action of its board of directors, may issue in lieu thereof scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause such scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip, or subject to any other conditions which the board of directors may deem advisable. [1965 c 53 § 23.]

**23A.08.210 Liability of subscribers and shareholders.** A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued.

Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable to the corporation as a holder of or subscriber to shares of a corporation but the estate and funds in his hands shall be so liable.

No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder. [1965 c 53 § 24.]

*Liability of stockholders: State Constitution Art. 12 § 4.*

**23A.08.220 Shareholders' preemptive rights.** The preemptive right of a shareholder to acquire unissued shares of a corporation may be limited or denied to the extent provided in the articles of incorporation. [1965 c 53 § 25.]

**23A.08.230 Bylaws.** The power to adopt, alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the shareholders unless vested in the board of directors by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation. [1965 c 53 § 26.]

**23A.08.240 Bylaws and other powers in emergency.** The board of directors of any corporation may adopt emergency bylaws, subject to repeal or change by action of the shareholders, which shall, notwithstanding any different provision elsewhere in this title or in the articles of incorporation or bylaws, be operative during any emergency in the conduct of the business of the corporation resulting from an attack on the United States or any nuclear or atomic disaster. The emergency bylaws may make any provision that may be practical and necessary for the circumstances of the emergency, including provisions that:

(1) A meeting of the board of directors may be called by any officer or director in such manner and under such conditions as shall be prescribed in the emergency bylaws;

(2) The director or directors in attendance at the meeting, or any greater number fixed by the emergency bylaws, shall constitute a quorum; and

(3) The officers or other persons designated on a list approved by the board of directors before the emergency, all in such order of priority and subject to such conditions and for such period of time (not longer than reasonably necessary after the termination of the emergency) as may be provided in the emergency bylaws or in the resolution approving the list, shall, to the extent required to provide a quorum at any meeting of the board of directors, be deemed directors for such meeting.

The board of directors, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such an emergency any or all officers or agents of the corporation shall for any reason be rendered incapable of discharging their duties.

The board of directors, either before or during any such emergency, may, effective in the emergency, change the head office or designate several alternative head offices or regional offices, or authorize the officers so to do.

To the extent not inconsistent with any emergency bylaws so adopted, the bylaws of the corporation shall remain in effect during any such emergency and upon its termination the emergency bylaws shall cease to be operative.

Unless otherwise provided in emergency bylaws, notice of any meeting of the board of directors during any such emergency may be given only to such of the directors as it may be feasible to reach at the time and by such means as may be feasible at the time, including publication or radio.

To the extent required to constitute a quorum at any meeting of the board of directors during any such emergency, the officers of the corporation who are present shall, unless otherwise provided in emergency bylaws, be deemed, in order of rank and within the same rank in order of seniority, directors for such meeting.

No officer, director or employee acting in accordance with any emergency bylaws shall be liable except for wilful misconduct. No officer, director or employee shall be liable for any action taken by him in good faith in such an emergency in furtherance of the ordinary business affairs of the corporation even though not authorized by the bylaws then in effect. [1965 c 53 § 27.]

**23A.08.250 Meetings of shareholders.** Meetings of shareholders may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting, or such other officers or persons as may be provided in the articles of incorporation or the bylaws. [1965 c 53 § 28.]

**23A.08.260 Notice of shareholders' meetings.** Written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid. [1965 c 53 § 29.]

**23A.08.270 Closing of transfer books and fixing record date.** For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, fifty days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote

at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the stock transfer books, the bylaws, or in the absence of an applicable bylaw, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than fifty days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof. [1965 c 53 § 30.]

**23A.08.280 Voting list.** The officer or agent having charge of the stock transfer books for shares of a corporation shall make, at least ten days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten days prior to such meeting, shall be kept on file at the registered office of the corporation. Such list shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof. The original stock transfer books shall be prima facie evidence as to who are the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders.

Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting.

An officer or agent having charge of the stock transfer books who shall fail to prepare the list of shareholders, or keep it on file for a period of ten days, or produce and keep it open for inspection at the meeting, as provided in this section, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage. [1965 c 53 § 31.]

**23A.08.290 Quorum of shareholders.** Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by this title or the articles of incorporation or bylaws. [1965 c 53 § 32.]

**23A.08.300 Voting of shares.** Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or classes are limited or denied by the articles of incorporation as permitted by this title.

Neither treasury shares, nor shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Unless the articles of incorporation otherwise provide, at each election for directors every shareholder entitled to vote at such election shall have the right to vote in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote, or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal, or by distributing such votes on the same principle among any number of such candidates.

Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine.

Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares. [1965 c 53 § 33.]

**23A.08.305 Missing shareholders—Representation of at meetings—Voting.** Upon a showing to the superior court of the county in which the registered office of a corporation is situated that:

(1) The addresses of the shareholders of record are lost, destroyed, incomplete or inadequate, and

(2) Notice of a meeting of shareholders for a purpose requiring the affirmative vote of the holders of two-thirds of any class of shares has been given in the manner required by law as nearly as may be done and has been published in a legal newspaper in Thurston county and in the county in which the registered office of the corporation is situated not less than ten nor more than fifty days before the date of the meeting, the court shall appoint a disinterested person to represent the missing shareholders of record at the meeting and to report his findings to the court which findings may include comments upon the showing made to the court as hereinabove provided. The court shall then approve any action taken at the meeting by the shareholders present in person or by proxy if the court is satisfied that it is in the best interests of the missing shareholders, and such approval shall have the same force and effect as an affirmative vote at the meeting by the missing shareholders. Said disinterested person shall receive reasonable compensation for his services from the corporation, to be fixed by the court.

(3) Published notice given under subsection (2) of this section shall state that:

(a) shareholders who have not received notice by mail will be treated as missing shareholders; and

(b) if the missing shareholders fail to appear at the shareholders' meeting, the court will appoint a person to vote their shares. [1973 c 28 § 1; 1969 ex.s. c 58 § 5.]

**23A.08.310 Stock transfer by married person.** Certificates of stock and the shares represented thereby standing in the name of a married person may be transferred by such person, such person's agent or attorney, without the signature of such person's spouse. All dividends payable upon any shares of a corporation standing in the name of a married person, shall be paid to such married person, such person's agent or attorney, in the same manner as if such person were unmarried, and it shall not be necessary for the other spouse to join in a receipt therefor; and any proxy or power given by a married person, touching any shares of any corporation standing in such person's name, shall be valid and binding without the signature of the other spouse. [1973 1st ex.s. c 154 § 23; 1965 c 53 § 34.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**23A.08.320 Shares issued or transferred in joint tenancy form—Presumption—Transfers pursuant to direction of survivor.** Whenever certificates for shares or other securities issued by domestic or foreign corporations are or have been issued or transferred to two or more persons in joint tenancy form on the books or records of the corporation, it is presumed in favor of the corporation, its registrar and its transfer agent that the shares or other securities are owned by such persons in

joint tenancy and not otherwise. A domestic or foreign corporation or its registrar or transfer agent is not liable for transferring or causing to be transferred on the books of the corporation to or pursuant to the direction of the surviving joint tenant or tenants any share or shares or other securities theretofore issued by the corporation to two or more persons in joint tenancy form on the books or records of the corporation, unless the transfer was made with actual knowledge by the corporation or by its registrar or transfer agent of the existence of any understanding, agreement, condition, or evidence that the shares or securities were held other than in joint tenancy, or of the invalidity of the joint tenancy or a breach of trust by the joint tenants. [1965 c 53 § 35.]

**23A.08.325 Community property agreements—**—**Transfers of shares pursuant to direction of surviving spouse.** Neither a domestic or foreign corporation or its registrar or transfer agent shall be liable for transferring or causing to be transferred on the books of the corporation to or pursuant to the direction of the surviving spouse of a deceased husband or wife any share or shares or other securities theretofore issued by the corporation to the deceased or surviving spouse or both of them if the corporation or its registrar or transfer agent shall be provided with the following:

(1) A copy of an agreement which shall have been entered into between the spouses pursuant to the provisions of section 2416 Code of 1881 and RCW 26.16.120 and certified by the auditor of the county in this state in whose office the same shall have been recorded;

(2) A certified copy of the death certificate of the deceased spouse;

(3) A release issued by the inheritance tax division of the department of revenue of this state; and

(4) An affidavit of the surviving spouse that:

(a) The shares or other securities constituted community property of the spouses at date of death of the deceased spouse and their disposition is controlled by the community property agreement;

(b) No proceedings have been instituted to contest or set aside or cancel the agreement; and that

(c) The claims of creditors have been paid or provided for. [1975 1st ex.s. c 264 § 1. Prior: 1975 1st ex.s. c 278 § 18; 1965 c 85 § 1. Formerly RCW 23.01.226.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**23A.08.330 Voting trust.** Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. The certificates of shares so transferred shall be surrendered and canceled, and new certificates therefor issued to such person or persons, as such trustee or trustees, in which

new certificates, it shall appear that they are issued pursuant to said agreement. In the entry of transfer on the books of the corporation it shall also be noted that the transfer is made pursuant to said agreement. The trustee or trustees shall execute and deliver to the transferors voting trust certificates. Such voting trust certificates shall be transferable in the same manner and with the same effect as certificates of stock under the laws of this state.

The counterpart of the voting trust agreement deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

At any time within six months before the expiration of such voting trust agreement as originally fixed or extended under this paragraph, one or more holders of voting trust certificates may, by agreement in writing, extend the duration of such voting trust agreement, nominating the same or substitute trustee or trustees, for an additional period not exceeding ten years. Such extension agreement shall not affect the rights or obligations of persons not parties thereto and shall in every respect comply with and be subject to all the provisions of this title applicable to the original voting trust agreement. [1965 c 53 § 36.]

**23A.08.340 Board of directors.** The business and affairs of a corporation shall be managed by a board of directors. The powers and duties of the board of directors may be prescribed by the bylaws. Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation. [1965 c 53 § 37.]

**23A.08.345 When action may be taken without meetings of directors or a committee.** Unless otherwise provided by the articles of incorporation or bylaws, any action required by this title to be taken at a meeting of the directors of a corporation, or any action which may be taken at a meeting of the directors or of a committee, may be taken without a meeting if a consent in writing, setting forth the action so to be taken, shall be signed before such action by all of the directors, or all of the members of the committee, as the case may be. Such consent shall have the same effect as a unanimous vote. [1967 c 176 § 1.]

*Action by shareholders without meeting: RCW 23A.44.090.*

**23A.08.350 Number and election of directors.** The number of directors of a corporation shall be not less than three, except that in cases where all shares of a corporation are owned of record by fewer than three shareholders, the number of directors may be less than three but not less than the number of such shareholders.

Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation. The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders, and until their successors shall have been elected and are qualified, unless removed in accordance with the provisions of the bylaws. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this title. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and is qualified, unless removed in accordance with the provisions of the bylaws. [1975 1st ex.s. c 264 § 2; 1965 c 53 § 38.]

**23A.08.360 Classification of directors.** When the board of directors shall consist of nine or more members, in lieu of electing the whole number of directors annually, the articles of incorporation may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders. [1965 c 53 § 39.]

**23A.08.370 Vacancies.** Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders. [1965 c 53 § 40.]

**23A.08.380 Removal of directors.** At a meeting called expressly for that purpose, directors may be removed in the manner provided in this section. The

entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which he is a part.

Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect of the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole. [1965 c 53 § 41.]

**23A.08.390 Quorum of directors.** A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws. [1965 c 53 § 42.]

**23A.08.400 Executive and other committees.** If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors, but no such committee shall have the authority of the board of directors in reference to amending the articles of incorporation, adopting a plan of merger or consolidation, recommending to the shareholders the sale, lease, exchange or other disposition of all or substantially all the property and assets of the corporation otherwise than in the usual and regular course of its business, recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof, or amending the bylaws of the corporation. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law. [1965 c 53 § 43.]

**23A.08.410 Place and notice of directors' or designated or appointed committee meetings—Presence.** Meetings of the board of directors, regular or special, may be held either within or without this state.

Regular meetings of the board of directors or of any committee designated by the bylaws or appointed by the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board

of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director or a committee member at a meeting shall constitute a waiver of notice of such meeting, except where a director or a committee member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors or any committee designated by the bylaws or appointed by the board of directors need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.

Except as may be otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or any committee designated by the bylaws or appointed by the board of directors may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting. [1975 1st ex.s. c 264 § 3; 1965 c 53 § 44.]

**23A.08.420 Dividends.** The board of directors of a corporation may, from time to time, declare and the corporation may pay dividends on its outstanding shares in cash, property, or its own shares, except when the corporation is insolvent or when the payment thereof would render the corporation insolvent or when the declaration or payment thereof would be contrary to any restrictions contained in the articles of incorporation, subject to the following provisions:

(1) Except as otherwise provided in this section, dividends may be declared and paid in cash or property only out of the unreserved and unrestricted earned surplus of the corporation, or out of the unreserved and unrestricted net earnings of the current fiscal year and the next preceding fiscal year taken as a single period. No such dividend shall be paid which would reduce the net assets of the corporation below the aggregate preferential amount payable in event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(2) In the case of a corporation engaged in the business of exploiting natural resources or owning property having a limited life, such as a lease for a term of years, or a patent, dividends may be declared and paid in cash out of the depletion reserves, but each such dividend shall be identified as a distribution of such reserves and the amount per share paid from such reserves shall be disclosed to the shareholders receiving the same concurrently with the distribution thereof.

(3) Dividends may be declared and paid in its own shares out of any treasury shares that have been reacquired out of surplus of the corporation.

(4) Dividends may be declared and paid in its own authorized but unissued shares out of any unreserved and unrestricted surplus of the corporation upon the following conditions:

(a) If a dividend is payable in its own shares having a par value, such shares shall be issued at not less than the

par value thereof and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus at least equal to the aggregate par value of the shares to be issued as a dividend.

(b) If a dividend is payable in its own shares without par value, such shares shall be issued at such stated value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate stated value so fixed in respect of such shares; and the amount per share so transferred to stated capital shall be disclosed to the shareholders receiving such dividend concurrently with the payment thereof.

(5) No dividend payable in shares of any class shall be paid to the holders of shares of any other class unless the articles of incorporation so provide or such payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made.

A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of this section. [1965 c 53 § 45.]

**23A.08.430 Distributions from capital surplus.** The board of directors of a corporation may, from time to time, distribute to its shareholders out of capital surplus of the corporation a portion of its assets, in cash or property, subject to the following provisions:

(1) No such distribution shall be made at a time when the corporation is insolvent or when such distribution would render the corporation insolvent.

(2) No such distribution shall be made unless the articles of incorporation so provide or such distribution is authorized by the affirmative vote of the holders of a majority of the outstanding shares of each class whether or not entitled to vote thereon by the provisions of the articles of incorporation of the corporation: *Provided*, That a Regulated Investment Company registered under the Investment Company Act of 1940, or any similar federal statute, shall have the right to make distributions out of capital surplus whether or not the articles of incorporation so provide and without prior shareholder approval.

(3) No such distribution shall be made to the holders of any class of shares unless all cumulative dividends accrued on all preferred or special classes of shares entitled to preferential dividends shall have been fully paid.

(4) No such distribution shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(5) Each such distribution, when made, shall be identified as a distribution from capital surplus and the amount per share disclosed to the shareholders receiving the same concurrently with the distribution thereof.

The board of directors of a corporation may also, from time to time, distribute to the holders of its outstanding



shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, dividends payable in cash out of the capital surplus of the corporation, if at the time the corporation has no earned surplus and is not insolvent and would not thereby be rendered insolvent. Each such distribution, when made, shall be identified as a payment of cumulative dividends out of capital surplus. [1967 c 190 § 9; 1965 c 53 § 46.]

**23A.08.440 Loans.** No loans shall be made by a corporation to its officers or directors, unless first approved by the holders of two-thirds of the voting shares, and no loans shall be made by a corporation secured by its shares. [1965 c 53 § 47.]

**23A.08.450 Liability of directors in certain cases.** In addition to any other liabilities imposed by law upon directors of a corporation:

(1) Directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this title or contrary to any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this title or the restrictions in the articles of incorporation.

(2) Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions of this title shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of the provisions of this title.

(3) The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.

(4) The directors of a corporation who vote for or assent to the making of a loan to an officer or director of the corporation, or the making of any loan secured by shares of the corporation, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof, unless approved by the shareholders as provided in RCW 23A.08.440.

(5) If a corporation shall commence business before it has received at least five hundred dollars as consideration for the issuance of shares, the directors who assent thereto shall be jointly and severally liable to the corporation for such part of five hundred dollars as shall not have been received before commencing business, but such liability shall be terminated when the corporation

has actually received five hundred dollars as consideration for the issuance of shares.

A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

A director shall not be liable under subsections (1), (2) or (3) of this section if he relied and acted in good faith upon financial statements of the corporation represented to him to be correct by the president or the officer of such corporation having charge of its books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation, nor shall he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be of their book value.

Any director against whom a claim shall be asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a corporation and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in violation of this title, in proportion to the amounts received by them respectively.

Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted. [1965 c 53 § 48.]

**23A.08.460 Provisions relating to actions by shareholders.** No action shall be brought in this state by a shareholder in the right of a domestic or foreign corporation unless the plaintiff was a holder of record of shares or of voting trust certificates therefor at the time of the transaction of which he complains, or his shares or voting trust certificates thereafter devolved upon him by operation of law from a person who was a holder of record at such time.

In any action hereafter instituted in the right of any domestic or foreign corporation by the holder or holders of record of shares of such corporation or of voting trust certificates therefor, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action.

In any action now pending or hereafter instituted or maintained in the right of any domestic or foreign corporation by the holder or holders of record of less than

five percent of the outstanding shares of any class of such corporation or of voting trust certificates therefor, unless the shares or voting trust certificates so held have a market value in excess of twenty-five thousand dollars, the corporation in whose right such action is brought shall be entitled at any time before final judgment to require the plaintiff or plaintiffs to give security for the reasonable expenses, including fees of attorneys, that may be incurred by it in connection with such action or may be incurred by other parties named as defendant for which it may become legally liable. Market value shall be determined as of the date that the plaintiff institutes the action or, in the case of an intervener, as of the date that he becomes a party to the action. The amount of such security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive. The corporation shall have recourse to such security in such amount as the court having jurisdiction shall determine upon the termination of such action, whether or not the court finds the action was brought without reasonable cause. [1965 c 53 § 49.]

**23A.08.470 Officers.** The officers of a corporation shall consist of a president, one or more vice presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two or more offices may be held by the same person, except the offices of president and secretary, except that when all of the issued and outstanding stock of the corporation is owned of record by one person, such person may hold all or any combination of offices.

All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws. [1975 1st ex.s. c 264 § 4; 1965 c 53 § 50.]

**23A.08.480 Annual report—Contents—Filing—Compliance—Violation—Penalty.** (1) Every corporation hereafter organized under this title and any foreign corporation authorized to do business in the state of Washington, shall (a) within thirty days after it shall have filed its articles of incorporation with the county auditor of the county in which the corporation has its registered office, or (b) within thirty days of the issuance of its certificate of authority, file an annual report with the officials and containing the information described in subsections (2)(a) through (2)(d) of this section.

(2) In addition, every corporation heretofore or hereafter organized under the laws of the territory or state of Washington and any foreign corporation authorized to do business in Washington shall at the time it is required to pay its annual license fee and at

such additional times as it may elect, file with the secretary of state and with the county auditor of the county in which said corporation has its registered office an annual report, sworn to by its president and attested by its secretary, containing, as of the date of execution of the report:

(a) The name of the corporation and the state or country under the laws of which it is incorporated.

(b) The address of the registered office of the corporation in this state including street and number and the name of its registered agent in this state at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated.

(c) A brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in this state.

(d) The names and respective addresses of the directors and officers of the corporation.

(3) The secretary of state shall file such annual report in his office for the fee of two dollars. If any corporation shall fail to comply with the foregoing provisions of this section and more than one year shall have elapsed from the date of the filing of the last report, service of process against such corporation may be made by serving duplicate copies upon the secretary of state. Upon such service being made, the secretary of state shall forthwith mail one of such duplicate copies of such process to such corporation at its registered office or its last known address, as shown by the records of his office.

(4) For every violation of this section there shall become due and owing to the state of Washington the sum of five dollars which sum shall be collected by the secretary of state. [1973 c 71 § 1; 1971 ex.s. c 133 § 1; 1971 ex.s. c 38 § 6; 1969 ex.s. c 83 § 2; 1967 c 190 § 3; 1965 c 53 § 51.]

**23A.08.490 Removal of officers.** Any officer or agent may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights. [1965 c 53 § 52.]

**23A.08.500 Books and records.** Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors; and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each.

Any person who shall have been a shareholder of record for at least six months immediately preceding his demand or who shall be the holder of record of at least five percent of all the outstanding shares of a corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person, or by agent or

attorney, at any reasonable time or times, for any proper purpose, its books and records of account, minutes and record of shareholders and to make extracts therefrom.

Any officer or agent who, or a corporation which, shall refuse to allow any such shareholder, or his agent or attorney, so to examine and make extracts from its books and records of account, minutes, and record of shareholders, for any proper purpose, shall be liable to such shareholder in a penalty of ten percent of the value of the shares owned by such shareholder, in addition to any other damages or remedy afforded him by law. It shall be a defense to any action for penalties under this section that the person suing therefor has within two years sold or offered for sale any list of shareholders of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders for any such purpose, or has improperly used any information secured through any prior examination of the books and records of account, or minutes, or record of shareholders of such corporation or any other corporation, or was not acting in good faith or for a proper purpose in making his demand.

Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him, to compel the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders of a corporation.

Upon the written request of any shareholder of a corporation, the corporation shall mail to such shareholder its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations. [1965 c 53 § 53.]

### Chapter 23A.12 FORMATION OF CORPORATIONS

#### Sections

- 23A.12.010 Incorporators.
- 23A.12.020 Articles of incorporation.
- 23A.12.030 Filing of articles of incorporation.
- 23A.12.040 Effect of issuance of certificate of incorporation.
- 23A.12.050 Requirement before commencing business.
- 23A.12.060 Organization meeting of directors.

*Filing lists of corporate officers—30 day limit: RCW 23A.08.480.*

**23A.12.010 Incorporators.** One or more persons of the age of eighteen years, or more, or a domestic or foreign corporation, may act as incorporator or incorporators of a corporation by signing and delivering in triplicate to the secretary of state articles of incorporation for such corporation. [1971 ex.s. c 292 § 36; 1965 c 53 § 54.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**23A.12.020 Articles of incorporation.** The articles of incorporation shall set forth:

- (1) The name of the corporation.
- (2) The period of duration, which may be perpetual.

(3) The purpose or purposes for which the corporation is organized.

(4) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value.

(5) If all or any portion of the shares have no par value, the aggregate value of those shares, or, such aggregate value shall be stated in the affidavit filed pursuant to RCW 23A.40.050.

(6) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class.

(7) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.

(8) A statement that the corporation will not commence business until consideration of the value of at least five hundred dollars has been received for the issuance of shares.

(9) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the corporation.

(10) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision restricting the transfer of shares and any provision which under this title is required or permitted to be set forth in the bylaws.

(11) The address of its initial registered office and the name of its initial registered agent at such address.

(12) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify.

(13) The name and address of each incorporator.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this title. [1965 c 53 § 55.]

**23A.12.030 Filing of articles of incorporation.** Triplicate originals of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, he shall, when all the fees have been paid as in this title described:

(1) Endorse on each of such originals the word "Filed," and the month, day and year of the filing thereof.

(2) File one of such originals in his office.

(3) Issue a certificate of incorporation to which he shall affix one of such originals.

The certificate of incorporation together with the original of the articles of incorporation affixed thereto by the secretary of state, and the other remaining original shall be returned to the incorporators or their representative. Such remaining original shall then be filed in the office of the county auditor of the county in which the registered office is situated. The original affixed to the certificate of incorporation shall be retained by the corporation. [1965 c 53 § 56.]

**23A.12.040 Effect of issuance of certificate of incorporation.** Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this title, except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation. Notwithstanding the provisions of RCW 23A.04.010, subsection 6, those persons who subscribed for shares prior to the issuance of the certificate of incorporation, or their assigns, shall be shareholders in the corporation upon such issuance, unless their rights under the stock subscription agreement have been terminated under the provisions of RCW 23A.08.140. [1965 c 53 § 57.]

**23A.12.050 Requirement before commencing business.** A corporation shall not transact any business or incur any indebtedness, except such as shall be incidental to its organization or to obtaining subscriptions to or payment for its shares, until there has been paid in for the issuance of shares consideration of the value of at least five hundred dollars. [1965 c 53 § 58.]

**23A.12.060 Organization meeting of directors.** After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the incorporators, for the purpose of electing officers and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of meeting. [1965 c 53 § 59.]

## Chapter 23A.16 AMENDMENT

### Sections

- 23A.16.010 Right to amend articles of incorporation.
- 23A.16.020 Procedure to amend articles of incorporation.
- 23A.16.030 Class voting on amendments.
- 23A.16.040 Articles of amendment.
- 23A.16.050 Filing of articles of amendment.
- 23A.16.060 Effect of certificate of amendment.
- 23A.16.070 Restated articles of incorporation.
- 23A.16.080 Amendment of articles of incorporation in reorganization proceedings.

23A.16.090 Restriction on redemption or purchase of redeemable shares.

23A.16.100 Cancellation of redeemable shares by redemption or purchase.

23A.16.110 Cancellation of other reacquired shares.

23A.16.120 Reduction of stated capital in certain cases.

23A.16.130 Special provisions relating to surplus and reserves.

### 23A.16.010 Right to amend articles of incorporation.

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification or cancellation.

In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation, from time to time, so as:

- (1) To change its corporate name.
- (2) To change its period of duration.
- (3) To change, enlarge or diminish its corporate purposes.
- (4) To increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue.
- (5) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued.
- (6) To exchange, classify, reclassify or cancel all or any part of its shares, whether issued or unissued.
- (7) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect of all or any part of its shares, whether issued or unissued.
- (8) To change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value.
- (9) To change the shares of any class, whether issued or unissued, and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes.
- (10) To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued.
- (11) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared.
- (12) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series.

(13) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established.

(14) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.

(15) To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established.

(16) To limit, deny or grant to shareholders of any class the preemptive right to acquire additional shares of the corporation, whether then or thereafter authorized. [1965 c 53 § 60.]

**23A.16.020 Procedure to amend articles of incorporation.** Amendments to the articles of incorporation shall be made in the following manner:

(1) The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this title for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

(3) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting. [1965 c 53 § 61.]

**23A.16.030 Class voting on amendments.** The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

(1) Increase or decrease the aggregate number of authorized shares of such class.

(2) Increase or decrease the par value of the shares of such class.

(3) Effect an exchange, reclassification or cancellation of all or part of the shares of such class.

(4) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class.

(5) Change the designations, preferences, limitations or relative rights of the shares of such class.

(6) Change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes.

(7) Create a new class of shares having rights and preferences prior and superior to the shares of such class, or increase the rights and preferences of any class having rights and preferences prior or superior to the shares of such class.

(8) In the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series, or authorize the board of directors to do so.

(9) Limit or deny the existing preemptive rights of the shares of such class.

(10) Cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared. [1965 c 53 § 62.]

**23A.16.040 Articles of amendment.** The articles of amendment shall be executed in triplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles, and shall set forth:

(1) The name of the corporation.

(2) The amendment so adopted.

(3) The date of the adoption of the amendment by the shareholders.

(4) The number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class.

(5) The number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively.

(6) If such amendment provides for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected.

(7) If such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by such amendment. [1965 c 53 § 63.]

**23A.16.050 Filing of articles of amendment.** Triplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to

law, he shall, when all fees have been paid as in this title prescribed:

(1) Endorse on each of such triplicate originals the word "Filed," and the month, day and year of the filing thereof.

(2) File one of such originals in his office.

(3) Issue a certificate of amendment to which he shall affix one of such originals.

The certificate of amendment, together with the original of the articles of amendment affixed thereto by the secretary of state, and the other remaining original, shall be returned to the corporation or its representative. Such remaining original shall then be filed in the office of the county auditor of the county in which the registered office of the corporation is situated. The original affixed to the certificate of amendment shall be retained by the corporation. [1967 c 190 § 4; 1965 c 53 § 64.]

**23A.16.060 Effect of certificate of amendment.** Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason. [1965 c 53 § 65.]

**23A.16.070 Restated articles of incorporation.** (1) A domestic corporation may, at any time, by resolution of its board of directors and without the necessity of approval by its shareholders, restate in a single document the entire text of its articles of incorporation, as previously amended, supplemented or restated, by filing in the office of the secretary of state a document entitled "Restated Articles of Incorporation of (insert name of corporation)" which shall set forth the articles as amended and supplemented to the date of the restated articles.

(2) The restated articles of incorporation shall not alter or amend the original articles or any amendment thereto in any substantive respect and shall contain all the statements required by this title to be included in the original articles of incorporation, except that in lieu of setting forth the names and addresses of the first board of directors, the restated articles shall set forth the names and addresses of the directors in office at the time of the adoption of the restated articles; and no statement need be made with respect to the names and addresses of the incorporators or shares subscribed by them.

(3) The restated articles of incorporation shall be prepared in triplicate originals, signed by the president or vice-president and by the treasurer, secretary or assistant secretary, of the corporation and shall be verified by their signed affidavits, (a) that they have been authorized to execute such restated articles by resolution of the board of directors adopted on the date stated, (b) that the restated articles correctly set forth the text of the

articles of incorporation as amended and supplemented to the date of the restated articles and (c) that the restated articles supersede and take the place of theretofore existing articles of incorporation and amendments thereto.

(4) Triplicate originals of the restated articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the restated articles of incorporation conform to law, he shall, when all fees have been paid as in this title prescribed:

(a) Endorse on each of such triplicate originals the word "Filed," and the month, day and year of the filing thereof.

(b) File one of such originals in his office.

(c) Issue a certificate of restated articles of incorporation to which he shall affix one of such originals.

Thereupon the restated articles of incorporation shall become effective.

(5) The certificate of restated articles of incorporation, together with the original of restated articles of incorporation affixed thereto by the secretary of state, and the other remaining original, shall be returned to the corporation or its representative. Such remaining original shall then be filed in the office of the county auditor of the county in which the registered office of the corporation is situated. The original affixed to the restated certificate of incorporation shall be retained by the corporation.

(6) The restated articles of incorporation shall supersede and take the place of theretofore existing articles of incorporation and amendments thereto and shall have the same effect and may be used for the same purposes as original articles of incorporation. [1967 c 190 § 5; 1965 c 53 § 66.]

**23A.16.080 Amendment of articles of incorporation in reorganization proceedings.** (1) Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

(a) Change the corporate name, period of duration or corporate purposes of the corporation;

(b) Repeal, alter or amend the bylaws of the corporation;

(c) Change the aggregate number of shares, or shares of any class, which the corporation has authority to issue;

(d) Change the preferences, limitations and relative rights in respect of all or any part of the shares of the

corporation, and classify, reclassify or cancel all or any part thereof, whether issued or unissued;

(e) Authorize the issuance of bonds, debentures or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and

(f) Constitute or reconstitute and classify or reclassify the board of directors of the corporation, and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

(2) Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(a) Articles of amendment approved by decree or order of such court shall be executed and verified in triplicate by such person or persons as the court shall designate or appoint for the purpose, and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

(b) Triplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this title prescribed:

(i) Endorse on each of such originals the word "Filed," and the month, day and year of the filing thereof.

(ii) File one of such originals in his office.

(iii) Issue a certificate of amendment to which he shall affix one of such originals.

(3) The certificate of amendment, together with the original of the articles of amendment affixed thereto by the secretary of state and the other remaining original, shall be returned to the corporation or its representative. Such remaining original shall then be filed in the office of the county auditor of the county in which the registered office is situated. The original affixed to the certificate of amendment shall be retained by the corporation.

(4) Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly, without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation. [1965 c 53 § 67.]

**23A.16.090 Restriction on redemption or purchase of redeemable shares.** No redemption or purchase of redeemable shares shall be made by a corporation when it is insolvent or when such redemption or purchase would render it insolvent, or which would reduce the net

assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon involuntary dissolution. [1965 c 53 § 68.]

**23A.16.100 Cancellation of redeemable shares by redemption or purchase.** (1) When redeemable shares of a corporation are redeemed or purchased by the corporation, the redemption or purchase shall effect a cancellation of such shares, and a statement of cancellation shall be filed as provided in this section. Thereupon such shares shall be restored to the status of authorized but unissued shares, unless the articles of incorporation provide that such shares when redeemed or purchased shall not be reissued, in which case the filing of the statement of cancellation shall constitute an amendment to the articles of incorporation and shall reduce the number of shares of the class so canceled which the corporation is authorized to issue by the number of shares so canceled.

(2) The statement of cancellation shall be executed in triplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

(a) The name of the corporation.

(b) The number of redeemable shares canceled through redemption or purchase, itemized by classes and series.

(c) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation.

(d) The amount, expressed in dollars, of the stated capital of the corporation after giving effect of such cancellation.

(e) If the articles of incorporation provide that the canceled shares shall not be reissued, then the number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to such cancellation.

(3) Triplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this title prescribed:

(a) Endorse on each of such originals the word "Filed," and the month, day and year of the filing thereof.

(b) File one of such originals in his office.

(c) Return the other originals to the corporation or its representative. One of these originals shall be filed in the office of the county auditor of the county in which the registered office of the corporation is situated, and the other original shall be retained by the corporation.

(4) Upon the filing by the secretary of state of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled.

(5) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this title. [1965 c 53 § 69.]



**23A.16.110 Cancellation of other reacquired shares.**

(1) A corporation may at any time, by resolution of its board of directors, cancel all or any part of the shares of the corporation of any class reacquired by it, other than redeemable shares redeemed or purchased, and in such event a statement of cancellation shall be filed as provided in this section.

(2) The statement of cancellation shall be executed in triplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

(a) The name of the corporation.

(b) The number of reacquired shares canceled by resolution duly adopted by the board of directors, itemized by classes and series, and the date of its adoption.

(c) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation.

(d) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation.

(3) Triplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this title prescribed:

(a) Endorse on each of such originals the word "Filed," and the month, day and year of the filing thereof.

(b) File one of such originals in his office.

(c) Return the other originals to the corporation or its representative. One of these originals shall be filed in the office of the county auditor of the county in which the registered office of the corporation is situated, and the other original shall be retained by the corporation.

(4) Upon the filing by the secretary of state of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled, and the shares so canceled shall be restored to the status of authorized but unissued shares.

(5) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this title. [1965 c 53 § 70.]

**23A.16.120 Reduction of stated capital in certain cases.** (1) A reduction of the stated capital of a corporation, where such reduction is not accompanied by any action requiring an amendment of the articles of incorporation and not accompanied by a cancellation of shares, may be made in the following manner:

(a) The board of directors shall adopt a resolution setting forth the amount of the proposed reduction and the manner in which the reduction shall be effected, and directing that the question of such reduction be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written notice, stating that the purpose or one of the purposes of such meeting is to consider the question of reducing the stated capital of the corporation in the

amount and manner proposed by the board of directors, shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this title for the giving of notice of meetings of shareholders.

(c) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the question of approving the proposed reduction of stated capital, which shall require for its adoption the affirmative vote of the holders of a majority of the shares entitled to vote thereon.

(2) When a reduction of the stated capital of a corporation has been approved as provided in this section, a statement shall be executed in triplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

(a) The name of the corporation.

(b) A copy of the resolution of the shareholders approving such reduction, and the date of its adoption.

(c) The number of shares outstanding, and the number of shares entitled to vote thereon.

(d) The number of shares voted for and against such reduction, respectively.

(e) A statement of the manner in which such reduction is effected, and a statement, expressed in dollars, of the amount of stated capital of the corporation after giving effect to such reduction.

(3) Triplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this title prescribed:

(a) Endorse on each of such originals the word "Filed," and the month, day and year of the filing thereof.

(b) File one of such originals in his office.

(c) Return the other originals to the corporation or its representative. One of these originals is to be filed in the office of the auditor of the county in which the registered office of the corporation is located, and the other is to be retained by the corporation.

(4) Upon the filing of such statement by the secretary of state, the stated capital of the corporation shall be reduced as therein set forth.

(5) No reduction of stated capital shall be made under the provisions of this section which would reduce the amount of the aggregate stated capital of the corporation to an amount equal to or less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of involuntary liquidation, plus the aggregate par value of all issued shares having a par value but no preferential right in the assets of the corporation in the event of involuntary liquidation. [1965 c 53 § 71.]

**23A.16.130 Special provisions relating to surplus and reserves.** The surplus, if any, created by or arising out of a reduction of the stated capital of a corporation shall be capital surplus.

The capital surplus of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the earned surplus of the corporation be transferred to capital surplus.

A corporation may, by resolution of its board of directors apply any part or all of its capital surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus shall, to the extent thereof, effect a reduction of capital surplus.

A corporation may, by resolution of its board of directors, create a reserve or reserves out of its earned surplus for any proper purpose or purposes, and may abolish any such reserve in the same manner. Earned surplus of the corporation to the extent so reserved shall not be available for the payment of dividends or other distributions by the corporation except as expressly permitted by this title. [1965 c 53 § 72.]

### Chapter 23A.20 MERGER AND CONSOLIDATION

#### Sections

- 23A.20.010 Procedure for merger.
- 23A.20.020 Procedure for consolidation.
- 23A.20.030 Approval by shareholders.
- 23A.20.040 Articles of merger or consolidation.
- 23A.20.050 Merger of subsidiary corporation.
- 23A.20.060 Effect of merger or consolidation.
- 23A.20.070 Merger or consolidation of domestic and foreign corporations.
- 23A.20.080 Conversion of cooperative association to business corporation or merger with business corporation.

*Right of shareholders to dissent to merger or consolidation: RCW 23A.24.030.*

*Rights of dissenting shareholders: RCW 23A.24.040.*

**23A.20.010 Procedure for merger.** Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this title.

The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(1) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(2) The terms and conditions of the proposed merger.

(3) The manner and basis of converting the shares of each merging corporation into shares or other securities or obligations of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

(4) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

(5) Such other provisions with respect to the proposed merger as are deemed necessary or desirable. [1971 ex.s. c 38 § 2; 1965 c 53 § 73.]

**23A.20.020 Procedure for consolidation.** Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this title.

The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

(1) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

(2) The terms and conditions of the proposed consolidation.

(3) The manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation or of any other corporation or, in whole or in part, into cash or other property.

(4) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this title.

(5) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable. [1971 ex.s. c 38 § 3; 1965 c 53 § 74.]

**23A.20.030 Approval by shareholders.** The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than twenty days before such meeting, in the manner provided in this title for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed plan of merger or consolidation. A copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice.

At each such meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of two-thirds of the shares entitled to vote thereon of each such corporation, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class.

After such approval by a vote of the shareholders of each corporation, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation. [1965 c 53 § 75.]

**23A.20.040 Articles of merger or consolidation.** (1)

Upon such approval, articles of merger or articles of consolidation shall be executed in triplicate by each corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers of each corporation signing such articles, and shall set forth:

(a) The plan of merger or the plan of consolidation.

(b) As to each corporation, the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.

(c) As to each corporation, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

(2) Triplicate originals of the articles of merger or articles of consolidation shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this title prescribed:

(a) Endorse on each of such originals the word "Filed," and the month, day and year of the filing thereof.

(b) File one of such originals in his office.

(c) Issue a certificate of merger or a certificate of consolidation to which he shall affix one of such originals.

(3) The certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the secretary of state, and the other remaining original, shall be returned to the surviving or new corporation, or its representative. Such remaining original shall then be filed in the office of the county auditor of the county in which the registered office is situated. The original affixed to the certificate of merger or consolidation shall be retained by the corporation. [1965 c 53 § 76.]

**23A.20.050 Merger of subsidiary corporation.** (1)

Any corporation owning at least ninety-five percent of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

(a) The name of the subsidiary corporation and the name of the corporation owning at least ninety-five percent of its shares, which is hereinafter designated as the surviving corporation.

(b) The manner and basis of converting the shares of the subsidiary corporation into shares or other securities or obligations of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property, or the cash or other consideration to be paid or delivered upon surrender of each share of the subsidiary corporation.

(2) A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

(3) Articles of merger shall be executed in triplicate by the surviving corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of its officers signing such articles, and shall set forth:

(a) The plan of merger;

(b) The number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and

(c) The date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

(4) On and after the thirtieth day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares triplicate originals of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this title prescribed:

(a) Endorse on each of such originals the word "Filed," and the month, day and year of the filing thereof;

(b) File one of such originals in his office; and

(c) Issue a certificate of merger to which he shall affix one of such originals.

(5) The certificate of merger, together with the original of the articles of merger affixed thereto by the secretary of state, and the other original, shall be returned to the surviving corporation or its representative. Such remaining original shall then be filed in the office of the auditor of the county in which the registered office of the corporation is situated. The original affixed to the certificate of merger shall be retained by the corporation. [1971 ex.s. c 38 § 4; 1965 c 53 § 77.]

**23A.20.060 Effect of merger or consolidation.** Upon the issuance of the certificate of merger or the certificate of consolidation by the secretary of state, the merger or consolidation shall be effected.

When such merger or consolidation has been effected:

(1) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this title.

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and

every other interest of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statement set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this title shall be deemed to be the original articles of incorporation of the new corporation. [1965 c 53 § 78.]

**23A.20.070 Merger or consolidation of domestic and foreign corporations.** One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

(1) Each domestic corporation shall comply with the provisions of this title with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(2) If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of this title with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the secretary of state of this state:

(a) An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

(b) An irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding; and

(c) An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this title with respect to the rights of dissenting shareholders.

The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise.

At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation. [1965 c 53 § 79.]

**23A.20.080 Conversion of cooperative association to business corporation or merger with business corporation.** See RCW 23.86.200–23.86.230.

## Chapter 23A.24 SALE OF ASSETS

### Sections

23A.24.010 Sale of assets in regular course of business—Mortgage or pledge of assets.

23A.24.020 Sale of assets other than in regular course of business.

23A.24.030 Right of shareholders to dissent.

23A.24.040 Rights of dissenting shareholders.

**23A.24.010 Sale of assets in regular course of business—Mortgage or pledge of assets.** The sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of a corporation in the usual and regular course of its business and the mortgage or pledge of any or all property and assets of a corporation whether or not in the usual and regular course of business may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as shall be authorized by its board of directors; and in any such case no authorization or consent of the shareholders shall be required. [1965 c 53 § 80.]

**23A.24.020 Sale of assets other than in regular course of business.** A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as may be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than twenty days before such meeting, in

the manner provided in this title for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes is to consider the proposed sale, lease, exchange, or other disposition.

(3) At such meeting the shareholders may authorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of two-thirds of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

(4) After such authorization by a vote of shareholders, the board of directors nevertheless, in its discretion, may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders. [1965 c 53 § 81.]

**23A.24.030 Right of shareholders to dissent.** Any shareholder of a corporation shall have the right to dissent from any of the following corporate actions:

(1) Any plan of merger or consolidation to which the corporation is a party; or

(2) Any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within one year after the date of sale.

A shareholder may dissent as to less than all of the shares registered in his name. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.

The provisions of this section shall not apply to the shareholders of the surviving corporation in a merger if such corporation is on the date of the filing of the articles of merger the owner of all the outstanding shares of the other corporations, domestic or foreign, which are parties to the merger, or if a vote of the shareholders of such corporation is not necessary to authorize such merger. [1965 c 53 § 82.]

**23A.24.040 Rights of dissenting shareholders.** Any shareholder electing to exercise such right of dissent shall file with the corporation, prior to or at the meeting of shareholders at which such proposed corporate action is submitted to a vote, a written objection to such proposed corporate action. If such proposed corporate action be approved by the required vote and such shareholder shall not have voted in favor thereof, such shareholder may, within ten days after the date on which the

vote was taken, or if a corporation is to be merged without a vote of its shareholders into another corporation, any other shareholders may, within fifteen days after the plan of such merger shall have been mailed to such shareholders, make written demand on the corporation, or, in the case of a merger or consolidation, on the surviving or new corporation, domestic or foreign, for payment of the fair value of such shareholder's shares, and, if such proposed corporate action is effected, such corporation shall pay to such shareholder, upon surrender of the certificate or certificates representing such shares, the fair value thereof as of the day prior to the date on which the vote was taken approving the proposed corporate action, excluding any appreciation or depreciation in anticipation of such corporate action. Any shareholder failing to make demand within the ten day period shall be bound by the terms of the proposed corporate action. Any shareholder making such demand shall thereafter be entitled only to payment as in this section provided and shall not be entitled to vote or to exercise any other rights of a shareholder.

No such demand shall be withdrawn unless the corporation shall consent thereto. The right of such shareholder to be paid the fair value of his shares shall cease and his status as a shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim, if:

(1) Such demand shall be withdrawn upon consent; or

(2) The proposed corporate action shall be abandoned or rescinded or the shareholders shall revoke the authority to effect such action; or

(3) In the case of a merger, on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger; or

(4) No demand or petition for the determination of fair value by a court shall have been made or filed within the time provided by this section; or

(5) A court of competent jurisdiction shall determine that such shareholder is not entitled to the relief provided by this section.

Within ten days after such corporate action is effected, the corporation, or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall give written notice thereof to each dissenting shareholder who has made demand as herein provided, and shall make a written offer to each such shareholder to pay for such shares at a specified price deemed by such corporation to be the fair value thereof. Such notice and offer shall be accompanied by a balance sheet of the corporation the shares of which the dissenting shareholder holds, as of the latest available date and not more than twelve months prior to the making of such offer, and a profit and loss statement of such corporation for the twelve months' period ended on the date of such balance sheet.

If within thirty days after the date on which such corporate action was effected the fair value of such shares is agreed upon between any such dissenting shareholder and the corporation, payment therefor shall be made

within ninety days after the date on which such corporate action was effected, upon surrender of the certificate or certificates representing such shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares.

If within such period of thirty days a dissenting shareholder and the corporation do not so agree, then the corporation, within thirty days after receipt of written demand from any dissenting shareholder given within sixty days after the date on which such corporate action was effected, shall, or at its election at any time within such period of sixty days may, file a petition in any court of competent jurisdiction in the county in this state where the registered office of the corporation is located praying that the fair value of such shares be found and determined. If, in the case of a merger or consolidation, the surviving or new corporation is a foreign corporation without a registered office in this state, such petition shall be filed in the county where the registered office of the domestic corporation was last located. If the corporation shall fail to institute the proceeding as herein provided, any dissenting shareholder may do so in the name of the corporation. All dissenting shareholders, wherever residing, shall be made parties to the proceeding as an action against their shares quasi in rem. A copy of the petition shall be served on each dissenting shareholder who is a resident of this state and shall be served by registered or certified mail on each dissenting shareholder who is a nonresident. Service on nonresidents shall also be made by publication as provided by law. The jurisdiction of the court shall be plenary and exclusive. All shareholders who are parties to the proceeding shall be entitled to judgment against the corporation for the amount of the fair value of their shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof. The judgment shall be payable only upon and concurrently with the surrender to the corporation of the certificate or certificates representing such shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares.

The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances, from the date on which the vote was taken on the proposed corporate action to the date of payment.

The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court may deem equitable against any or all of the dissenting shareholders who are parties to the proceeding to whom the corporation shall have made an offer to pay for the shares if the court shall find that the action of such shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and

expenses of counsel for and experts employed by any party; but if the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to any shareholder who is a party to the proceeding such sum as the court may determine to be reasonable compensation to any expert or experts employed by the shareholder in the proceeding.

Within twenty days after demanding payment for his shares, each shareholder demanding payment shall submit the certificate or certificates representing his shares to the corporation for notation thereon that such demand has been made. His failure to do so shall, at the option of the corporation, terminate his rights under this section unless a court of competent jurisdiction, for good and sufficient cause shown, shall otherwise direct. If shares represented by a certificate on which notation has been so made shall be transferred, each new certificate issued therefor shall bear similar notation, together with the name of the original dissenting holder of such shares, and a transferee of such shares shall acquire by such transfer no rights in the corporation other than those which the original dissenting shareholder had after making demand for payment of the fair value thereof.

Shares acquired by a corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, as in this section provided, may be held and disposed of by such corporation as in the case of other treasury shares, except that, in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation may otherwise provide. [1965 c 53 § 83.]

## Chapter 23A.28 DISSOLUTION

### Sections

- 23A.28.010 Voluntary dissolution by incorporators.
- 23A.28.020 Voluntary dissolution by consent of shareholders.
- 23A.28.030 Voluntary dissolution by act of corporation.
- 23A.28.040 Filing of statement of intent to dissolve.
- 23A.28.050 Effect of statement of intent to dissolve.
- 23A.28.060 Procedure after filing of statement of intent to dissolve.
- 23A.28.070 Revocation of voluntary dissolution proceedings by consent of shareholders.
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- 23A.28.090 Filing of statement of revocation of voluntary dissolution proceedings.
- 23A.28.100 Effect of statement of revocation of voluntary dissolution proceedings.
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- 23A.28.220 Decree of involuntary dissolution.
- 23A.28.230 Filing of decree of dissolution.
- 23A.28.240 Deposit with state treasurer of amount due certain shareholders.
- 23A.28.250 Survival of remedy after dissolution.

**23A.28.010 Voluntary dissolution by incorporators.**

A corporation which has not commenced business and which has not issued any shares, may be voluntarily dissolved by its incorporators at any time within two years after the date of the issuance of its certificate of incorporation, in the following manner:

(1) Articles of dissolution shall be executed in triplicate by a majority of the incorporators, and verified by them, and shall set forth:

(a) The name of the corporation.

(b) The date of issuance of its certificate of incorporation.

(c) That none of its shares has been issued.

(d) That the corporation has not commenced business.

(e) That the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.

(f) That no debts of the corporation remain unpaid.

(g) That a majority of the incorporators elect that the corporation be dissolved.

(2) Triplicate originals of the articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that the articles of dissolution conform to law, he shall, when all fees have been paid as in this title prescribed:

(a) Endorse on each of such originals the word "Filed," and the month, day and year of the filing thereof.

(b) File one of such originals in his office.

(c) Issue a certificate of dissolution to which he shall affix one of such originals.

The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the secretary of state, and the other original, shall be returned to the incorporators or their representatives. Such remaining original shall then be filed in the office of the auditor of the county in which the registered office of the corporation is situated. Upon the issuance of such certificate of dissolution by the secretary of state, the existence of the corporation shall cease. [1965 c 53 § 84.]

**23A.28.020 Voluntary dissolution by consent of shareholders.** A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

Upon the execution of such written consent, a statement of intent to dissolve shall be executed in triplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(1) The name of the corporation.

(2) The names and respective addresses of its officers.

(3) The names and respective addresses of its directors.

(4) A copy of the written consent signed by all shareholders of the corporation.

(5) A statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized. [1965 c 53 § 85.]

**23A.28.030 Voluntary dissolution by act of corporation.** A corporation may be dissolved by the act of the corporation, when authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this title for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or special meeting, shall state that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation.

(3) At such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(4) Upon the adoption of such resolution, a statement of intent to dissolve shall be executed in triplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(a) The name of the corporation.

(b) The names and respective addresses of its officers.

(c) The names and respective addresses of its directors.

(d) A copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation.

(e) The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.

(f) The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively. [1965 c 53 § 86.]

**23A.28.040 Filing of statement of intent to dissolve.**

Triplicate originals of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this title prescribed:

(1) Endorse on each of such originals the word "Filed," and the month, day and year of the filing thereof.

(2) File one of such originals in his office.

(3) Return the other originals to the corporation or its representative. One of these originals shall be filed with



the office of the auditor of the county in which the registered office of the corporation is situated, and the other original shall be retained by the corporation. [1965 c 53 § 87.]

**23A.28.050 Effect of statement of intent to dissolve.** Upon the filing by the secretary of state of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the secretary of state or until a decree dissolving the corporation has been entered by a court of competent jurisdiction as in this title provided. [1965 c 53 § 88.]

**23A.28.060 Procedure after filing of statement of intent to dissolve.** After the filing by the secretary of state of a statement of intent to dissolve:

(1) The corporation shall immediately cause notice thereof to be mailed to each known creditor of the corporation.

(2) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

(3) The corporation, at any time during the liquidation of its business and affairs, may make application to a court of competent jurisdiction within the state and judicial subdivision in which the registered office or principal place of business of the corporation is situated, to have the liquidation continued under the supervision of the court as provided in this title. [1965 c 53 § 89.]

**23A.28.070 Revocation of voluntary dissolution proceedings by consent of shareholders.** By the written consent of all of its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceedings shall be executed in triplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

- (1) The name of the corporation.
- (2) The names and respective addresses of its officers.
- (3) The names and respective addresses of its directors.

(4) A copy of the written consent signed by all shareholders of the corporation revoking such voluntary dissolution proceedings.

(5) That such written consent has been signed by all shareholders of the corporation or signed in their names

by their attorneys thereunto duly authorized. [1965 c 53 § 90.]

**23A.28.080 Revocation of voluntary dissolution proceedings by act of corporation.** By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

(1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a special meeting of shareholders.

(2) Written notice, stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this title for the giving of notice of special meetings of shareholders.

(3) At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of two-thirds of the shares entitled to vote thereon.

(4) Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed in triplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

- (a) The name of the corporation.
- (b) The names and respective addresses of its officers.
- (c) The names and respective addresses of its directors.
- (d) A copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings.
- (e) The number of shares outstanding.
- (f) The number of shares voted for and against the resolution, respectively. [1965 c 53 § 91.]

**23A.28.090 Filing of statement of revocation of voluntary dissolution proceedings.** Triplicate originals of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this title prescribed:

(1) Endorse on each of such originals the word "Filed," and the month, day and year of the filing thereof.

(2) File one of such originals in his office.

(3) Return the other originals to the corporation or its representative. One of these originals shall be filed in the office of the auditor of the county in which the registered office of the corporation is situated, and the other original shall be retained by the corporation. [1965 c 53 § 92.]

**23A.28.100 Effect of statement of revocation of voluntary dissolution proceedings.** Upon the filing by the secretary of state of a statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may again carry on its business. [1965 c 53 § 93.]

**23A.28.110 Articles of dissolution.** If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in triplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

- (1) The name of the corporation.
- (2) That the secretary of state has theretofore filed a statement of intent to dissolve the corporation, and the date on which such statement was filed.
- (3) That all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.
- (4) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests.
- (5) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit. [1965 c 53 § 94.]

**23A.28.120 Filing of articles of dissolution.** Triplicate originals of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to law, he shall, when all fees have been paid as in this title prescribed:

- (1) Endorse on each of such originals the word "Filed," and the month, day and year of the filing thereof.
- (2) File one of such originals in his office.
- (3) Issue a certificate of dissolution to which he shall affix one of such originals.

The certificate of dissolution, together with the original of the articles of dissolution affixed thereto by the secretary of state, and the remaining original shall be returned to the representative of the dissolved corporation. The remaining original shall be filed in the office of the auditor of the county in which the registered office of the corporation is situated. The original affixed to the certificate of dissolution shall be retained by the corporation. Upon the issuance of such certificate the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided in this title. [1965 c 53 § 95.]

**23A.28.130 Involuntary dissolution.** A corporation may be dissolved involuntarily by a decree of the superior court in an action filed by the attorney general when it is established that:

- (1) The corporation procured its articles of incorporation through fraud; or
- (2) The corporation has continued to exceed or abuse the authority conferred upon it by law; or
- (3) The corporation has failed for thirty days to appoint and maintain a registered agent in this state; or
- (4) The corporation has failed for thirty days after change of its registered office or registered agent to file in the office of the secretary of state a statement of such change. [1969 ex.s. c 92 § 1; 1965 c 53 § 96.]

**23A.28.150 Venue and process.** Every action for the involuntary dissolution of a corporation shall be commenced by the attorney general in the superior court of the county in which the registered office of the corporation is situated. Summons shall issue and be served as in other civil actions. If process is returned not found, the attorney general shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default may be entered. The attorney general may include in one notice the names of any number of corporations against which actions are then pending in the same court. The attorney general shall cause a copy of such notice to be mailed to the corporation at its registered office within ten days after the first publication thereof. The certificate of the attorney general of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than thirty days after the first publication of such notice. [1965 c 53 § 98.]

**23A.28.160 Bankruptcy rules shall apply to dissolution.** In a proceeding for dissolution subject to the supervision of the court, all questions in respect to proof, allowance, payment and priority of claims shall be governed by the same rules as are applicable in bankruptcy proceedings under the national bankruptcy act as in force at the time of the dissolution proceedings. [1965 c 53 § 99.]

**23A.28.170 Jurisdiction of court to liquidate assets and business of corporation.** The superior courts shall have full power to liquidate the assets and business of a corporation:

- (1) In an action by a shareholder when it is established:
  - (a) That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

(b) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(c) That the shareholders are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

(d) That the corporate assets are being misapplied or wasted.

(2) In an action by a creditor:

(a) When the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent; or

(b) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(3) Upon application by a corporation which has filed a statement of intent to dissolve, as provided in this title, to have its liquidation continued under the supervision of the court.

(4) When an action has been filed by the attorney general to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

Proceedings under clause (1), (2) or (3) of this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally. [1965 c 53 § 100.]

**23A.28.180 Procedure in liquidation of corporation by court.** In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by shareholders on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such

powers and duties may be increased or diminished at any time during the proceedings.

The court shall have power to allow from time to time as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated. [1965 c 53 § 101.]

**23A.28.190 Qualifications of receivers.** A receiver shall in all cases be a citizen of the United States or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require. [1965 c 53 § 102.]

**23A.28.200 Filing of claims in liquidation proceedings.** In proceedings to liquidate the assets and business of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation. [1965 c 53 § 103.]

**23A.28.210 Discontinuance of liquidation proceedings.** The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets. [1965 c 53 § 104.]

**23A.28.220 Decree of involuntary dissolution.** In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation,

whereupon the existence of the corporation shall cease. [1965 c 53 § 105.]

**23A.28.230 Filing of decree of dissolution.** In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the secretary of state. No fee shall be charged by the secretary of state for the filing thereof. [1965 c 53 § 106.]

**23A.28.240 Deposit with state treasurer of amount due certain shareholders.** Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the state treasurer and shall be paid over to such creditor or shareholder or to his legal representative upon proof satisfactory to the state treasurer of his right thereto. Said assets shall be handled and disbursed as provided in chapter 63.28 RCW. [1965 c 53 § 107.]

**23A.28.250 Survival of remedy after dissolution.** The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the secretary of state, or (2) by a decree of court when the court has not liquidated the assets and business of the corporation as provided in this title, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration. [1965 c 53 § 108.]

### Chapter 23A.32 FOREIGN CORPORATIONS

#### Sections

- 23A.32.010 Admission of foreign corporation.
- 23A.32.020 Powers of foreign corporation.
- 23A.32.030 Corporate name of foreign corporation.
- 23A.32.040 Change of name by foreign corporation.
- 23A.32.050 Application for certificate of authority.
- 23A.32.060 Filing of application for certificate of authority.
- 23A.32.070 Effect of certificate of authority.
- 23A.32.080 Registered office and registered agent of foreign corporation.
- 23A.32.090 Change of registered office or registered agent of foreign corporation.
- 23A.32.100 Service of process on foreign corporation.
- 23A.32.110 Amendment to articles of incorporation of foreign corporation.

23A.32.120 Merger of foreign corporation authorized to transact business in this state.

23A.32.130 Amended certificate of authority.

23A.32.140 Withdrawal of foreign corporation.

23A.32.150 Filing of application for withdrawal.

23A.32.160 Revocation of certificate of authority.

23A.32.170 Issuance of certificate of revocation.

23A.32.180 Application to corporations heretofore authorized to transact business in this state.

23A.32.190 Transacting business without certificate of authority.

*Alien land law: Chapter 64.16 RCW.*

*Annual license fee payable by foreign corporations: RCW 23A.40.140.*

*Doing business without license a gross misdemeanor: RCW 9.24.040.*

*Filing fee payable by foreign corporation: RCW 23A.40.130.*

*Foreign corporations shall not be favored as against domestic corporations: State Constitution Art. 12 § 7.*

**23A.32.010 Admission of foreign corporation.** No foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this title to transact in this state any business which a corporation organized under this title is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this title contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purposes of this title, by reason of carrying on in this state any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

(2) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.

(3) Maintaining bank accounts.

(4) Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.

(5) Effecting sales through independent contractors.

(6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.

(7) Creating evidences of debt, mortgages or liens on real or personal property.

(8) Securing or collecting debts or enforcing any rights in property securing the same.

(9) Transacting any business in interstate commerce.

(10) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature. [1965 c 53 § 109.]

**23A.32.020 Powers of foreign corporation.** A foreign corporation which shall have received a certificate of authority under this title shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this title, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, except as in this title otherwise provided, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character. [1965 c 53 § 110.]

*Alien land law: Chapter 64.16 RCW.*

*Foreign corporations shall not be favored as against domestic corporations: State Constitution Art. 12 § 7.*

**23A.32.030 Corporate name of foreign corporation.** No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(1) Shall contain the word "corporation," "company," "incorporated," or "limited," or shall contain an abbreviation of one of such words, or such corporation shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof.

(2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance.

(3) Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this title, or the name of a corporation which has in effect a registration of its name as provided in this title: *Provided*, That a foreign corporation which is precluded from using its corporate name for one of the above reasons may adopt an assumed name under which it may conduct its business in this state. [1967 c 190 § 6; 1965 c 53 § 111.]

**23A.32.040 Change of name by foreign corporation.** Whenever a foreign corporation which is authorized to transact business in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter transact any business in this state until it has changed its name to a name which is available to it under the laws of this state. [1965 c 53 § 112.]

**23A.32.050 Application for certificate of authority.** A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the secretary of state, which application shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) If the name of the corporation does not contain the word "corporation", "company", "incorporated", or "limited", or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state.

(3) The date of incorporation and the period of duration of the corporation.

(4) The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.

(5) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state.

(6) The names and respective addresses of the president and secretary of the corporation.

(7) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any within a class.

(8) A statement that a registered agent has been appointed and the name and address of such agent, and that a registered office exists and the address of such registered office is identical to that of the registered agent.

(9) Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable as in this title prescribed.

Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such application.

Such application shall be accompanied by a certificate of good standing to be certified to by the proper officer of the state or country under the laws of which it is incorporated. [1971 c 22 § 1; 1965 c 53 § 113.]

**23A.32.060 Filing of application for certificate of authority.** Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of the certificate of good standing, duly authenticated by the proper officer of the state or country under the laws of which it is incorporated.

If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this title prescribed:

(1) Endorse on each of such documents the word "Filed", and the month, day and year of the filing thereof.

(2) File in his office one of such duplicate originals of the application.

(3) Issue a certificate of authority to transact business in this state to which he shall affix the other duplicate original application.

The certificate of authority, together with the duplicate original of the application affixed thereto by the

secretary of state, shall be returned to the corporation or its representative. [1973 c 89 § 1; 1971 c 22 § 2; 1965 c 53 § 114.]

**23A.32.070 Effect of certificate of authority.** Upon the issuance of a certificate of authority by the secretary of state, the corporation shall be authorized to transact business in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in this title. [1965 c 53 § 115.]

**23A.32.080 Registered office and registered agent of foreign corporation.** Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as its place of business in this state.

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office. [1971 c 22 § 3; 1965 c 53 § 116.]

*Revocation of certificate of authority—Failure to appoint and maintain a registered office or registered agent: RCW 23A.32.160.*

**23A.32.090 Change of registered office or registered agent of foreign corporation.** A foreign corporation authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a certificate setting forth:

(1) The name of the corporation.

(2) The address of its then registered office.

(3) If the address of its registered office be changed, the address to which the registered office is to be changed.

(4) The name of its then registered agent.

(5) If its registered agent be changed, the name of its successor registered agent.

(6) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

(7) That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed by the corporation by its president or a vice president, and verified by him, and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this title, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

Any registered agent of a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation at its principal office in the state or country under the laws of which it is incorporated. The appointment of such

agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state. [1965 c 53 § 117.]

*Revocation of certificate of authority—Failure to file statement of change of registered office or registered agent: RCW 23A.32.160.*

**23A.32.100 Service of process on foreign corporation.** The registered agent so appointed by a foreign corporation authorized to transact business in this state shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a foreign corporation authorized to transact business in this state shall fail to appoint or maintain a registered agent in this state, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, he shall immediately cause one of such copies thereof to be forwarded by registered mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. [1965 c 53 § 118.]

*Commencement of actions: Chapter 4.28 RCW.*

**23A.32.110 Amendment to articles of incorporation of foreign corporation.** Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within thirty days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly authenticated by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state, nor authorize such corporation to transact business in this state under any other name than the name set forth in its certificate of authority. [1965 c 53 § 119.]

*Revocation of certificate of authority—Failure to file amendment to articles of incorporation: RCW 23A.32.160.*

**23A.32.120 Merger of foreign corporation authorized to transact business in this state.** Whenever a foreign corporation authorized to transact business in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within thirty days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state. [1965 c 53 § 120.]

*Revocation of certificate of authority—Failure to file articles of merger: RCW 23A.32.160.*

**23A.32.130 Amended certificate of authority.** A foreign corporation authorized to transact business in this state shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the secretary of state.

The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the secretary of state, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority. [1965 c 53 § 121.]

**23A.32.140 Withdrawal of foreign corporation.** A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) That the corporation is not transacting business in this state.

(3) That the corporation surrenders its authority to transact business in this state.

(4) That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the secretary of state.

(5) A post office address to which the secretary of state may mail a copy of any process against the corporation that may be served on him.

The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing the application, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him. [1965 c 53 § 122.]

**23A.32.150 Filing of application for withdrawal.** Duplicate originals of such application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this title, he shall, when all fees have been paid as in this title prescribed:

(1) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of withdrawal to which he shall affix the other duplicate original.

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this state shall cease. [1965 c 53 § 123.]

**23A.32.160 Revocation of certificate of authority.** (1) The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

(a) The corporation has failed to pay any fees, or penalties prescribed by this title when they have become due and payable; or

(b) The corporation has failed to appoint and maintain a registered agent in this state as required by this title; or

(c) The corporation has failed, after change of its registered office or registered agent, to file in the office of the secretary of state a statement of such change as required by this title; or

(d) The corporation has failed to file in the office of the secretary of state any amendment to its articles of incorporation or any articles of merger within the time prescribed by this title; or

(e) A misrepresentation has been made of any material matter in any application, report, affidavit or other document submitted by such corporation pursuant to this title.

(2) No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless (a) he shall have given the corporation not less than sixty days notice thereof by mail addressed to its registered office in this state, and (b) the corporation shall fail prior to revocation to pay such fees or penalties, or file the



required statement of change of registered agent or registered office, or file such articles of amendment or articles of merger, or correct such misrepresentation. [1965 c 53 § 124.]

*Amendment to articles of incorporation: RCW 23A.32.110.*

*Annual license fee: RCW 23A.40.140.*

*Articles of merger: RCW 23A.32.120.*

*Change of registered office or registered agent: RCW 23A.32.090.*

*Filing fee: RCW 23A.40.130.*

*Registered office and registered agent: RCW 23A.32.080.*

### **23A.32.170 Issuance of certificate of revocation.**

Upon revoking any such certificate of authority, the secretary of state shall:

- (1) Issue a certificate of revocation in duplicate;
- (2) File one of such certificates in his office;
- (3) Mail to such corporation at its registered office in this state a notice of such revocation accompanied by one of such certificates.

Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in this state shall cease. [1965 c 53 § 125.]

**23A.32.180 Application to corporations heretofore authorized to transact business in this state.** Foreign corporations which are duly authorized to transact business in this state at the time this title takes effect, for a purpose or purposes for which a corporation might secure such authority under this title, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under this title, and from the time this title takes effect such corporations shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this state under this title. [1965 c 53 § 126.]

**Effective date—**—1965 c 53: RCW 23A.98.050.

**23A.32.190 Transacting business without certificate of authority.** No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state, until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state.

A foreign corporation which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it

transacted business in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this title upon such corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this title and thereafter filed all reports required by this title, plus all penalties imposed by this title for failure to pay such fees. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section. [1965 c 53 § 127.]

*Doing business without a license a gross misdemeanor: RCW 9.24.040.*

## **Chapter 23A.36 NONADMITTED ORGANIZATIONS**

### Sections

23A.36.010 Nonadmitted organizations may own and enforce notes secured by real estate mortgages.

23A.36.020 Nonadmitted organizations may foreclose mortgages.

23A.36.030 By engaging in certain activities nonadmitted organizations are not carrying on business.

23A.36.040 Service of process.

23A.36.050 Procedure for service of process.

23A.36.060 Venue.

**23A.36.010 Nonadmitted organizations may own and enforce notes secured by real estate mortgages.** Any corporation, bank, trust company, mutual savings bank, savings and loan association, national banking association, or other corporation or association organized and existing under the laws of the United States or under the laws of any state or territory of the United States other than the state of Washington (including, without restriction of the generality of the foregoing description, employee pension fund organizations, charitable foundations, trust funds, or other funds, foundations or trusts engaged in the investment of moneys, and trustees of such organizations, foundations, funds or trusts), and which are not admitted to conduct business in the state of Washington under the provisions of this title, and which are not otherwise specifically authorized to transact business in this state (herein collectively referred to as "nonadmitted organizations") may purchase, acquire, hold, sell, assign, transfer and enforce notes secured by real estate mortgages covering real property situated in this state and the security interests thereby provided, and may make commitments to purchase or acquire such notes so secured. [1965 c 53 § 128.]

**23A.36.020 Nonadmitted organizations may foreclose mortgages.** Such nonadmitted organizations shall have the right to foreclose such mortgages under the laws of this state or to receive voluntary conveyance in lieu of foreclosure, and in the course of such foreclosure or of such receipt of conveyance in lieu of foreclosure, to acquire the mortgaged property, and to hold and own such property and to dispose thereof. Such nonadmitted organizations however, shall not be allowed to hold, own and operate said property for a period exceeding five years. In the event said nonadmitted organizations do hold, own and operate said property for a period in excess of five years, it shall be forthwith required to appoint an agent as required by RCW 23A.32.080 for

foreign corporations doing business in this state. [1965 c 53 § 129.]

**23A.36.030** By engaging in certain activities nonadmitted organizations are not carrying on business. The activities authorized by RCW 23A.36.010 and 23A.36.020, by such nonadmitted organizations shall not constitute "conducting business," "carrying on business," "transacting business," or "doing business" within the meaning of chapter 23A.32 RCW. [1965 c 53 § 130.]

**23A.36.040** Service of process. In any action in law or equity commenced by the obligor or obligors, it, his, her or their assignee or assignees against the said nonadmitted organizations on the said notes secured by said real estate mortgages purchased by said nonadmitted organizations, service of all legal process may be had by serving the secretary of state of the state of Washington. [1965 c 53 § 131.]

**23A.36.050** Procedure for service of process. Duplicate copies of legal process against said nonadmitted organizations shall be served upon the secretary of state by registered mail. At the time of service the plaintiff shall pay to the secretary of state five dollars taxable as costs in the action and shall also furnish the secretary of state the home office address of said nonadmitted organization. The secretary of state shall forthwith send one of the copies of process by registered mail with return receipt requested to the said nonadmitted organization to its home office. The secretary of state shall keep a record of the day and the hour of service upon him of all legal process. No proceedings shall be had against the nonadmitted organization nor shall it be required to appear, plead or answer until the expiration of forty days after the date of service upon the secretary of state. [1971 ex.s. c 133 § 2; 1965 c 53 § 132.]

*Commencement of actions: Chapter 4.28 RCW.*

**23A.36.060** Venue. Suit upon causes of action arising against the said nonadmitted organizations shall be brought in the county where the property is situated which is the subject of the mortgage purchased by the said nonadmitted organizations. If the property covered by the said mortgage is situated in more than one county, venue may be had in any of said counties where the property lies. [1965 c 53 § 133.]

### Chapter 23A.40 FEES AND CHARGES

#### Sections

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**23A.40.010** Secretary of state to charge and collect. The secretary of state shall charge and collect in accordance with the provisions of this title:

- (1) Fees for filing documents and issuing certificates;
- (2) Miscellaneous charges;
- (3) License fees. [1965 c 53 § 134.]

**23A.40.020** Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

(1) Filing articles of amendment and issuing a certificate of amendment, ten dollars;

(2) Filing restated articles of incorporation, ten dollars;

(3) Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifteen dollars;

(4) Filing an application to reserve a corporate name, ten dollars;

(5) Filing a notice of transfer of a reserved corporate name, five dollars;

(6) Filing a statement of change of address of registered office, revocation, resignation, change of registered agent, or any combination, of these, two dollars;

(7) Filing a statement of the establishment of a series of shares, ten dollars;

(8) Filing a statement of cancellation of shares, ten dollars;

(9) Filing a statement of reduction of stated capital, ten dollars;

(10) Filing a statement of intent to dissolve, five dollars;

(11) Filing a statement of revocation of voluntary dissolution proceedings, five dollars;

(12) Filing articles of dissolution, five dollars;

(13) Filing a certificate by a foreign corporation of the appointment of an agent residing in this state, or a certificate of the revocation of the appointment of such registered agent, or filing a notice of resignation by a registered agent, two dollars;

(14) Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, five dollars;

(15) Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, five dollars;

(16) Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, ten dollars;

(17) Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, fifteen dollars;

(18) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, five dollars;

(19) Filing any other statement or report, five dollars;

(20) Such other filings as are provided for by this title. [1971 ex.s. c 133 § 3; 1969 ex.s. c 83 § 3; 1967 c 190 § 7; 1965 c 53 § 135.]

*World fair, use of corporation fees: RCW 43.31.500 through 43.31.640.*

**23A.40.030 Miscellaneous charges.** The secretary of state shall charge and collect in advance from every domestic and foreign corporation, except corporations organized under the laws of this state for which existing law provides a different fee schedule:

(1) For furnishing a certified copy of any document, instrument or paper relating to a corporation, five dollars;

(2) At the time of any service of process on him as agent of a corporation, five dollars, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

The secretary of state shall also charge and collect from every person, organization, or group for furnishing copies of any document, instrument or paper relating to a corporation, fifty cents each for the first ten pages, twenty-five cents per page thereafter. [1971 ex.s. c 133 § 4; 1965 c 53 § 136.]

**23A.40.040 Domestics—Fees for filing articles and documents increasing capital stock—County auditor's fees.** Every domestic corporation, except one for which existing law provides a different fee schedule, shall pay for filing of its articles of incorporation a fee of fifty dollars for the first fifty thousand dollars or less, of its authorized capital stock; and one-tenth of one percent additional on all amounts in excess of fifty thousand dollars and not exceeding one million dollars; one twenty-fifth of one percent additional on all amounts in excess of one million dollars, and not exceeding four million dollars; and one-fiftieth of one percent additional on all amounts in excess of four million dollars; but in no case shall the amount exceed five thousand dollars.

Every domestic corporation, except one for which existing law provides a different fee schedule, desiring to file in the office of the secretary of state, articles amendatory or supplemental articles increasing its capital stock, or certificates of increase of capital stock, shall pay to the secretary of state the fees hereinabove in this section provided, in proportion to such increased capital stock upon the actual amount of such increase, and every such corporation desiring to file other amendatory or supplemental articles shall pay to the secretary of state a fee of ten dollars.

For filing the articles of incorporation the county auditor shall charge the sum of two dollars. For filing any other paper required to be filed by this title the county auditor shall charge the sum of one dollar. [1965 c 53 § 137.]

**23A.40.050 Statement of value of nonpar stock—Revaluation—Appeal.** In the case of any corporation whose stock is wholly or partly without par value, there shall be filed with the articles of incorporation the affidavit of one of the incorporators, or other representative of the corporation, stating that, to the best of his knowledge and belief, the value of the assets received and to be received by such corporation in return for the issuance of its nonpar value stock does not exceed a certain sum therein named, and the sum so named in such affidavit shall be assumed prima facie as the amount of capitalization represented by such nonpar value stock for the purpose of fixing the filing fees and annual license fees to be paid by such corporation under the laws of this state: *Provided*, That at any time within two years after the filing of such articles of incorporation, the secretary of state may investigate and make a findings as to the value of such assets, and if the value of the assets received in consideration of the issuance of such nonpar

value stock is found by him to exceed the amount stated in such affidavit, such corporation shall pay to the secretary of state the additional filing and license fees payable under the laws of this state, based on the excess of the true valuation, as so found, over the value stated in such affidavit, together with interest on such additional sum at the rate of eight percent per annum from the date when the same became due, such payment to be made within sixty days after notice mailed by the secretary of state addressed to such corporation at its last known address. Such finding of the secretary of state shall be subject to review on such evidence as the parties may submit to the court, if an action for such review be begun by such corporation in the superior court of Thurston county within the sixty days. If such action be begun, such corporation shall be allowed sixty days, after judgment of the court finally adjudging the matter, in which to pay any additional fees that may be payable.

The sum named in any such affidavit may be increased or reduced by the filing of an amended affidavit and the payment of a filing fee for such increase or reduction as is required for an increase or reduction of authorized shares for domestic corporations. [1965 c 53 § 138.]

**23A.40.060 Annual license fee payable by domestic corporations.** For the privilege of doing business, every corporation organized under the laws of this state, except the corporations for which existing law provides a different fee schedule, shall make and file an affidavit as to the amount of its authorized capital stock, and shall pay, on or before the first day of July of each and every year, to the secretary of state, and it shall be the duty of the secretary of state to collect, for the use of the state, an annual license fee of thirty dollars for the first fifty thousand dollars or less of its authorized capital stock; and one-twentieth of one percent additional on all amounts in excess of fifty thousand dollars, and not exceeding one million dollars; and one-fiftieth of one percent additional on all amounts in excess of one million dollars, and not exceeding four million dollars; and one one-hundredth of one percent additional on all amounts in excess of four million dollars; but in no case shall an annual license fee exceed the sum of two thousand five hundred dollars. [1969 ex.s. c 92 § 2; 1965 c 53 § 139.]

*Doing business without a license a gross misdemeanor: RCW 9.24.040.*

**23A.40.070 Penalty for nonpayment of annual license fees.** In the event any corporation, foreign or domestic, shall do business in this state without having paid its annual license fee when due, there shall become due and owing the state of Washington an additional license fee equivalent to one percent per month or fraction thereof computed upon each annual license fee from the date it should have been paid to the date when it is paid: *Provided*, That the minimum additional license fee due under the provisions of this section shall be two dollars and fifty cents. [1969 ex.s. c 92 § 3; 1965 c 53 § 140.]

*Doing business without a license a gross misdemeanor: RCW 9.24.040.*

**23A.40.075 Annual license fee constitutes tax on privilege of doing business—Payment required—Failure, existence ceases—Notification—Restoration and reinstatement—Fees.** The annual license fee required by RCW 23A.40.060, as now or hereafter amended, and RCW 23A.40.140 is a tax on the privilege of doing business as a corporation in the state of Washington. No corporation shall do business in this state without first having paid its annual license fee, except as provided in RCW 23A.36.010 and 23A.36.020.

Failure of the corporation to pay its annual license fees shall not derogate from the rights of its creditors, or prevent the corporation from being sued and from defending lawsuits, nor shall it release the corporation from any of the duties or liabilities of a corporation under law.

Every domestic corporation which shall fail for three consecutive years to acquire an annual license for the privilege of doing business in this state shall cease to exist as a corporation on the third anniversary of the date it was last licensed to do business in this state. When a corporation has ceased to exist by operation of this section, remedies available to or against it shall survive in the manner provided in RCW 23A.28.250 and the directors of the corporation shall hold the title to the property of the corporation as trustees for the benefit of its creditors and shareholders.

A domestic corporation which has not ceased to exist by operation of law may restore its privilege to do business by paying the current annual license fee and a restoration fee which shall include a sum equivalent to the amount of annual license fees the corporation would have paid had it continuously maintained its privilege to do business plus an additional fee equivalent to one percent per month or fraction thereof computed upon each annual license fee from the time it would have been paid had the corporation maintained its privilege to do business to the date when the corporation restored its privilege to do business: *Provided*, That the minimum additional license fee due under this section shall be two dollars and fifty cents. A corporation which has ceased to exist may reinstate within two years by paying all fees specified above plus a reinstatement fee of ten dollars and upon doing so shall be reinstated and again be entitled to do business, and may use its former corporate name if that name is not then in use by a corporation then in existence. If the former name is not available, the corporation may file amended articles to adopt a new name simultaneous with reinstatement. Upon payment of the above fees, restoration and reinstatement of the privilege to do business shall be effective, and the corporation shall have all the rights and privileges it would have possessed had it continually maintained its privilege to do business.

When any domestic corporation first fails to pay its annual license fee when due, the secretary of state shall, in that year only, mail to the corporation at its registered office, by first class mail, a notice that if it does not pay its annual license fee it will no longer have the privilege of doing business in this state, and that the corporation's privilege may be restored as provided in this

section, and the notice shall contain a reminder that, if the privilege is not restored for three consecutive years, the existence of the corporation shall cease without further notice. [1975 1st ex.s. c 36 § 1; 1971 ex.s. c 142 § 1; 1969 ex.s. c 92 § 4.]

**23A.40.080 Public service companies entitled to deductions.** The annual fee required to be paid to the Washington utilities and transportation commission by any public service corporation shall be deducted from the annual license fee provided herein and the excess only shall be collected.

It shall be the duty of the commission to furnish to the secretary of state on or before July 1st of each year a list of all public service corporations with the amount of annual license fees paid to the commission for the current year. [1965 c 53 § 141.]

**Reviser's note:** "Washington utilities and transportation commission" and "commission" substituted for "department of public service" and "director of public service" as the department was abolished and its powers and duties devolved upon the commission through the following statutes: (1) 1945 c 267; (2) 1949 c 117; (3) 1961 c 14; (4) 1961 c 290.

**23A.40.090 Fee of nonproducing corporation organized to develop natural resources.** Any corporation organized solely for the purpose of developing natural resources and which does not own or operate any producing mine or property, may file with the secretary of state, on or before the first day of July of any year, its statement, verified by the oath of its president and secretary, covering its operations for the year ending June 1st prior thereto, upon forms to be furnished to it by the secretary of state upon request, and pay therewith to the secretary of state a license fee of ten dollars, and shall thereupon be entitled to a license for the ensuing year.

The statement shall contain such information as may be required from time to time by the secretary of state, including the name of the company, its principal officers, amount of its authorized shares, subscribed and issued, its par value per share, the name and address of its resident agent or attorney in fact if a foreign corporation, and a brief description of the character and extent of the work and expenditures of the company during the preceding year. [1965 c 53 § 142.]

**23A.40.110 List of foreign corporations—County assessor to compile.** Every year at the time of the county tax assessment the county tax assessor shall compile a list of all of the foreign corporations doing business by agent or otherwise within his county. The list shall be alphabetical and shall contain:

- (1) The name of each foreign corporation;
- (2) The nature of the business of the corporation;
- (3) The name of the agent within the county of each corporation;
- (4) Business address of the agent; or
- (5) If an individual, both his business and residence address.

Within ten days after the compilation the tax assessor shall deliver the compiled list to the county auditor. [1965 c 53 § 144.]

**23A.40.120 List of foreign corporations to be sent to secretary of state.** Within thirty days of receipt of the list of foreign corporations as compiled by the county tax assessor pursuant to RCW 23A.40.110, the county auditor of each county shall send a true copy of the list to the secretary of state. [1965 c 53 § 145.]

**23A.40.130 Filing fee payable by foreign corporation.** A foreign corporation doing an intrastate business or seeking to do an intrastate business in the state of Washington shall qualify so to do in the manner prescribed in this title and shall pay for the privilege of so doing the filing and license fees prescribed in this title for domestic corporations, including the same fees as are prescribed herein for the filing of articles of incorporation of a domestic corporation. The fees are to be computed upon the portion of capital stock of such corporation represented or to be represented in the state of Washington, to be ascertained by comparing the value in money of its entire property and capital with the value in money of its property and capital in, or to be brought into, and used in this state. Any corporation that employs an increased amount of its capital stock within the state shall pay fees at the same rate upon such increase, and whenever such increase is made such corporation shall file with the secretary of state, a statement showing the amount of such increase. Before any foreign corporation shall be authorized to do intrastate business in the state of Washington it shall file with the secretary of state upon a blank form to be furnished for that purpose under the oath of its president, secretary, treasurer, superintendent or managing agent in this state, a statement showing the following facts:

(1) The number of shares of capital stock of the company and the par value of each share, and if such shares have no par value, then the value of the assets represented by nonpar shares.

(2) The portion of the capital stock of the company which is represented and/or to be represented, employed and/or to be employed in its business transacted or to be transacted in the state of Washington.

(3) The value of the property in or to be brought into, and the amount of capital to be used by the company in the state of Washington and the value of the property and capital owned and/or used by the company outside of the state of Washington.

(4) Such other facts as the secretary of state may require.

From the facts thus reported, and such other additional information as the secretary of state may require, the secretary of state shall determine the amount of capital or the proportionate amount of the capital stock of the company represented by its property and business in the state of Washington and upon which the fees prescribed herein are payable. [1965 c 53 § 146.]

**23A.40.140 Annual license fee payable by foreign corporation.** All foreign corporations doing intrastate business, or hereafter seeking to do intrastate business in this state shall pay for the privilege of doing such intrastate business in this state the same fees as are prescribed for domestic corporations for annual license fees.

Such fees shall be computed upon the proportion of the capital stock represented or to be represented by its property and business in this state to be ascertained by comparing the entire volume of business with the volume of intrastate business in this state. Any such corporation that shall employ an increased amount of its capital stock within this state shall pay license fees upon such increase in the same proportion as provided for payment of license fees by domestic corporations. Such corporations shall file with the secretary of state a statement showing the amount of such increase and shall forthwith pay to the secretary of state the increased license fee brought about by such increased use of capital represented by its property and business in this state. All fees shall be paid on or before the first day of July of each and every year. [1965 c 53 § 147.]

**23A.40.150 Surtax imposed.** There is hereby imposed and levied on the license and filing fees on domestic and foreign corporations as prescribed by RCW 23A.40.040, 23A.40.060, 23A.40.130 and 23A.40.140 a surtax of twenty-five percent to be collected from those corporations at the time they pay those license and filing fees. All fees collected in compliance with this section shall be deposited in the state general fund. [1971 ex.s. c 2 § 1.]

#### Chapter 23A.44 MISCELLANEOUS PROVISIONS

##### Sections

- 23A.44.010 Failure to answer interrogatories—Penalty.
- 23A.44.020 Interrogatories by secretary of state.
- 23A.44.030 Information disclosed by interrogatories.
- 23A.44.040 Power of secretary of state.
- 23A.44.050 Appeal from secretary of state.
- 23A.44.060 Certificates and certified copies to be received in evidence.
- 23A.44.070 Greater voting requirements.
- 23A.44.080 Waiver of notice.
- 23A.44.090 Action by shareholders without a meeting.
- 23A.44.100 Unauthorized assumption of corporate powers.
- 23A.44.110 Exemption from filing and license fees of building and loan and savings and loan associations.
- 23A.44.120 Compliance with fee requirements prerequisite to court proceedings.
- 23A.44.130 Application to foreign and interstate commerce.
- 23A.44.140 Application to existing corporations.
- 23A.44.145 Effect of repeal of prior law—Generally.
- 23A.44.146 Effect of repeal of prior law—Corporations in existence on July 1, 1967—Cumulative voting—Payment for shares—Construction.
- 23A.44.150 Disposition of funds received by secretary of state.
- 23A.44.160 Reservation of power by the legislature.
- 23A.44.170 Additional requirements imposed by law on regulated corporations not limited or repealed.

**23A.44.010 Failure to answer interrogatories—Penalty.** Each officer and director of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this title to answer truthfully and fully interrogatories propounded to him by the secretary of state in accordance with the provisions of this title, or who signs any articles, statement, report, application or other document filed with the secretary of state which is known to such officer or director to be false in any

material respect, shall be deemed to be guilty of a misdemeanor, and upon conviction thereof may be fined in any amount not exceeding five hundred dollars. [1965 c 53 § 148.]

*Involuntary dissolution—Procuring articles of incorporation through fraud: RCW 23A.28.130.*

*Revocation of certificate of authority—Misrepresentation in any application, report, affidavit: RCW 23A.32.160.*

**23A.44.020 Interrogatories by secretary of state.** The secretary of state may propound to any corporation, domestic or foreign, subject to the provisions of this title, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with all the provisions of this title applicable to such corporation. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the secretary of state, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice president, secretary or assistant secretary thereof. The secretary of state need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of this title. The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this title. [1965 c 53 § 149.]

**23A.44.030 Information disclosed by interrogatories.** Interrogatories propounded by the secretary of state and the answers thereto shall not be open to public inspection nor shall the secretary of state disclose any facts or information obtained therefrom except insofar as his official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this state. [1965 c 53 § 150.]

**23A.44.040 Power of secretary of state.** The secretary of state shall have the power and authority reasonably necessary to enable him to administer this title efficiently and to perform the duties therein imposed upon him. [1965 c 53 § 151.]

**23A.44.050 Appeal from secretary of state.** If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or any other document required by this title to be approved by the secretary of state before the same shall be filed in his office, he shall, within ten days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the superior court of the county in

which the registered office of such corporation is, or is proposed to be, situated by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the secretary of state; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

If the secretary of state shall revoke the certificate of authority to transact business in this state of any foreign corporation, pursuant to the provisions of this title, such foreign corporation may likewise appeal to the superior court of the county where the registered office of such corporation in this state is situated, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

Appeals from all final orders and judgments entered by the superior court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions. [1965 c 53 § 152.]

**23A.44.060 Certificates and certified copies to be received in evidence.** All certificates issued by the secretary of state in accordance with the provisions of this title, and all copies of documents filed in his office in accordance with the provisions of this title when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated. [1965 c 53 § 153.]

**23A.44.070 Greater voting requirements.** Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by this title with respect to such action, the provisions of the articles of incorporation shall control. [1965 c 53 § 154.]

**23A.44.080 Waiver of notice.** Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of this title or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. [1965 c 53 § 155.]

**23A.44.090 Action by shareholders without a meeting.** Any action required by this title to be taken at a

meeting of the shareholders of a corporation, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

Such consent shall have the same force and effect as a unanimous vote of shareholders, and may be stated as such in any articles or document filed with the secretary of state under this title. [1965 c 53 § 156.]

**23A.44.100 Unauthorized assumption of corporate powers.** All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. [1965 c 53 § 157.]

**23A.44.110 Exemption from filing and license fees of building and loan and savings and loan associations.** Building and loan and savings and loan associations paying special fees provided for in the act under which the same are incorporated, shall not be required to pay the filing and license fees provided for herein and shall be exempted from the provisions of this title. [1965 c 53 § 158.]

**23A.44.120 Compliance with fee requirements prerequisite to court proceedings.** No corporation shall be permitted to commence or maintain any suit, action, or proceeding in any court of this state, without alleging and proving that it has paid or contracted to pay as herein provided all fees and penalties due the state of Washington under existing law or this title. [1965 c 53 § 159.]

**23A.44.130 Application to foreign and interstate commerce.** The provisions of this title shall apply to commerce with foreign nations and among the several states only insofar as the same may be permitted under the provisions of the Constitution of the United States. [1965 c 53 § 160.]

**23A.44.140 Application to existing corporations.** The provisions of this title shall apply to all existing corporations organized under any general act of this state providing for the organization of corporations for a purpose or purposes for which a corporation might be organized under this title, where the power has been reserved to amend, repeal or modify the act under which such corporation was organized and where such act is repealed by this title. Neither the enactment of this title nor the amendment or repeal thereof, nor of any statute affecting corporations, shall take away or impair any liability of cause of action existing or accrued against any corporation, its shareholders, directors or officers. [1965 c 53 § 161.]

**23A.44.145 Effect of repeal of prior law—Generally.** The repeal of a prior act by chapter 53, Laws of 1965, shall not affect any right accrued, acquired or established, or any liability or penalty incurred, under the provisions of such act, prior to the repeal thereof.



The repeal of a prior act by chapter 53, Laws of 1965, shall not affect, nor constitute a repeal with respect to, the law applicable to any corporation unless the provisions of chapter 53, Laws of 1965, apply to such corporation. [1967 c 190 § 10.]

**23A.44.146 Effect of repeal of prior law—Corporations in existence on July 1, 1967—Cumulative voting—Payment for shares—Construction.** The enactment of chapter 53, Laws of 1965, and the repeal of any prior act thereby, shall not, with respect to any corporation in existence on July 1, 1967:

(1) Permit less than a unanimous vote of the shareholders of a corporation having cumulative voting on July 1, 1967, to limit or eliminate cumulative voting in the election of directors, or

(2) Limit or deny the right of any shareholder to demand and receive payment for his shares by reason of any corporate action, unless the shareholder and other holders of shares of the same class are entitled to vote as a class with respect to such corporate action under RCW 23A.16.030: *Provided, however,* That such right to demand and receive payment for shares shall be treated as a right to dissent, to be exercised and disposed of in accordance with RCW 23A.24.040, and to be denied with respect to those certain sales and mergers with respect to which RCW 23A.24.030 expressly denies the right to dissent.

The foregoing are declared to be among the rights accrued, acquired or established within the meaning of RCW 23A.44.145. [1969 ex.s. c 58 § 4.]

**23A.44.150 Disposition of funds received by secretary of state.** Any moneys received by the secretary of state under the provisions of this title shall be by him paid into the state treasury as provided by law. [1965 c 53 § 162.]

**23A.44.160 Reservation of power by the legislature.** The legislature shall at all times have power to prescribe such regulations, provisions and limitations as it may deem advisable, which regulations, provisions and limitations shall be binding upon any and all corporations subject to the provisions of this title, and the legislature shall have power to amend, repeal or modify this title at pleasure. [1965 c 53 § 163.]

*Reservation of power to legislature: State Constitution Art. 12 § 1.*

**23A.44.170 Additional requirements imposed by law on regulated corporations not limited or repealed.** Nothing contained in this title shall be construed to limit or repeal additional requirements imposed by statute on corporations subject to the jurisdiction of state regulatory agencies. [1969 ex.s. c 83 § 4.]

### Chapter 23A.98 CONSTRUCTION

#### Sections

23A.98.010 Short title.  
23A.98.020 Effect of invalidity of part of this title.  
23A.98.030 No impairment of state obligation as evidenced by bonds.  
23A.98.040 Repeals.

23A.98.050 Effective date—1965 c 53.

**Reviser's note:** In this chapter, as elsewhere throughout Title 23A RCW, the phrase "this title" has been substituted for the session law phrase "this act". All sections of 1965 c 53 are codified herein with the exception of § 1 (see reviser's note following title digest) and § 168 which amends RCW 4.12.025.

**23A.98.010 Short title.** This title shall be known and may be cited as the Washington business corporation act. [1965 c 53 § 2.]

**23A.98.020 Effect of invalidity of part of this title.** If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this title, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this title, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this title so adjudged to be invalid or unconstitutional. [1965 c 53 § 164.]

**23A.98.030 No impairment of state obligation as evidenced by bonds.** Nothing contained in this title shall be construed as an impairment of any obligation of the state as evidenced by bonds held for any purpose, and subsections 2 and 13 of RCW 23A.40.020, subsections 1 and 2 of RCW 23A.40.030, and RCW 23A.40.040, 23A.40.050, 23A.40.060, 23A.40.070, 23A.40.080, 23A.40.090, 23A.40.130 and 23A.40.140 shall be deemed to be a continuation of chapter 70, Laws of 1937, as amended, for the purpose of payment of:

(1) world's fair bonds authorized by chapter 174, Laws of 1957 as amended by chapter 152, Laws of 1961, and

(2) outdoor recreation bonds authorized by referendum bill number 11 (chapter 12, Laws of 1963 extraordinary session), approved by the people on November 3, 1964. [1965 c 53 § 165.]

**Reviser's note:** "chapter 70, Laws of 1937, as amended" imposing corporation fees and penalties was codified in chapters 23.52 and 23.60 RCW, which chapters were subsequently repealed by 1965 c 53.

*Outdoor recreation bonds: Chapter 43.98 RCW.*

*World's fair bonds: RCW 43.31.500.*

**23A.98.040 Repeals.** The following acts or parts of acts are hereby repealed:

- (1) Section 1, chapter 132, Laws of 1963;
- (2) Chapter 160, Laws of 1961;
- (3) Sections 1 and 2, chapter 208, Laws of 1961;
- (4) Sections 1 and 2, chapter 12, Laws of 1959;
- (5) Sections 1 and 4, chapter 263, Laws of 1959;
- (6) Sections 1 through 4, chapter 198, Laws of 1957;
- (7) Sections 1 through 3, chapter 143, Laws of 1955;
- (8) Chapter 92, Laws of 1955;
- (9) Chapter 213, Laws of 1953;
- (10) Chapter 170, Laws of 1949;
- (11) Chapter 172, Laws of 1949;
- (12) Chapter 188, Laws of 1949;
- (13) Chapter 195, Laws of 1947;
- (14) Sections 1 and 2, chapter 226, Laws of 1947;
- (15) Chapter 32, Laws of 1943;
- (16) Section 7, chapter 103, Laws of 1941;

- (17) Sections 1 through 18, chapter 143, Laws of 1939;
  - (18) Sections 1 through 32, chapter 70, Laws of 1937;
  - (19) Chapter 185, Laws of 1933;
  - (20) Chapter 168, Laws of 1923;
  - (21) Chapter 93, Laws of 1915;
  - (22) Chapter 41, Laws of 1911;
  - (23) Chapter 11, Laws of 1905;
  - (24) Chapter LXX (70), Laws of 1897;
  - (25) Chapter XXXVIII (38), Laws of 1895;
  - (26) Chapter CXLII (142), Laws of 1895;
  - (27) Page 288, Laws of 1890;
  - (28) Page 85, Laws of 1886;
  - (29) Page 86, Laws of 1886;
  - (30) Page 87, Laws of 1886;
  - (31) RCW 23.52.010 through 23.52.120;
  - (32) Chapters 23.01, 23.54, 23.60 and 23.70 RCW.
- [1965 c 53 § 166.]

**23A.98.050 Effective date**—1965 c 53. This title shall take effect on July 1, 1967. [1965 c 53 § 167.]

